Supreme Court, U. S.
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APPENDIX (VOLUME II)

In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-285

STATE OF CALIFORNIA, et al.,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 19, 1977
CERTIORARI GRANTED DECEMBER 2, 1977

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APPENDIX (VOLUME II)

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United States of America v. State of California, et al.,

Eastern District of California, No. S-3014.

DEFENDANTS' EXHIBIT 1
AFFIDAVIT OF BILL B. DENDY

Bill B. Dendy, being first duly sworn, deposes and says:

1. I am the Executive Officer of the State Water Resources Control Board, and as such have supervision and control over the official documents and records of the State Water Resources Control Board.

2. The exhibits attached hereto are true and correct copies of official records and documents maintained in the files of the State Water Resources Control Board, and are identified as follows:

Exhibit No.	Description
2	Decision 1422.
3-A	Application No. 14858.
3-B	Application No. 14859.
3-C	Application No. 19303.
3-D	Application No. 19304.
4	Petition for Assignment of Applications Numbers 14858 and 14859.
5	Decision 935, page 64.
10	Administrative Reporter's Transcript, Hearing of State Water Resources Control Board re Decision 1422.
11	Briefs submitted by parties in hearing of State Water Resources Control Board re Decision 1422.
12	Exhibits filed by parties in hearing of State Water Resources Control Board re Decision 1422 (partial list).

3. Since 1927, the United States has submitted to the State Water Resources Control Board, or its predecessors, at least 29 applications for permits to appropriate water from the Central Valley Project. At least 20 additional applications for permits [1] to appropriate water from the Central Valley Project have been assigned to the United States, and a request for assignment of two additional applications for permits to appropriate water for the Marysville Dam project has been submitted but not yet approved. Forty-one of these applications have been approved, most conditionally, but adoption of Decisions 893, 935, D-990, 1020, 1100, 1250, 1308, 1356, 1361, and 1422, by Permit Order 124, and an unnumbered Permit Order adopted July 28, 1960. To date, two licenses and 39 permits have been issued as a result of the aforementioned applications, three of the applications have been cancelled, and seven applications are still pending. One of the permits issued includes only storage so that the direct diversion feature is also still pending.

4. The processing of the above applications has resulted in several hearings conducted by the State Water Resources Control Board and its predecessors, commencing in 1957 and extending over several years. These hearings have consumed a substantial portion of the time and attention of the State Water Resources Control Board and its predecessors. Many parties who use water for various purposes, including agricultural, municipal and industrial use, and many parties who assert environmental interests, have offered evidence or otherwise participated in those hearings.

5. The application numbers, permit numbers, if any, sources, and purpose of use on the aforementioned applications submitted by the United States, which have been

approved, conditionally or otherwise, by the State Water Resources Control Board and its predecessors are as follows:

Application	Permit	Source	Purpose of Use
10588	12728	Sacramento R	Power
13370	11315	American R	Irrigation, etc. [2]
13371	11316	American R	Municipal, etc.
13372	11317	American R	Power
14662	11318	American R	Power
15374	11968	Trinity R	Municipal, etc.
15375	11969	Trinity R	Irrigation, etc.
15376	11970	Trinity R	Power
15424	19957	Clear Creek	Power
16767	11971	Trinity R	Irrigation, etc.
16768	11972	Trinity R	Power
17374	11973	Trinity R	Irrigation, etc.
17375	12365	Clear Creek	Power
17376	12364	Clear Creek	Irrigation, etc.
18721	16209	N.Fk.American R	Irrigation, etc.
18723	16210	N.Fk.American R	Power
19303	16599	Stanislaus R	Power
19304	16600	Stanislaus R	Irrigation, etc.
20350	16182	American R	Municipal, etc.
21542	15149	Old River	Power
21636	16211	N.Fk.American R	Power
21637	16212	N.Fk.American R	Irrigation, etc.
22316	15735	Rock Slough	Irrigation, etc.

6. The application numbers, permit numbers, if any, sources, and purposes of use on the aforementioned applications assigned to the United States by other parties, in order to allow the United States to acquire priority, are as follows:

Application	Permit	Source	Purpose of Use
23	11986	San Joaquin R	Irrigation, etc.
234	11885	San Joaquin R	Irrigation, etc.
1465	11886	San Joaquin R	Irrigation, etc.
5625	12720	Sacramento R	Power
5626	12721	Sacramento R	Irrigation, etc. [3]
5627	11966	Trinity R	Power
5628	11967	Trinity R	Irrigation, etc.
5638	11887	San Joaquin R	Irrigation, etc.
9363	12722	Sacramento R	Municipal, etc.
9364	12723	Sacramento R	Irrigation, etc.
9365	12724	Sacramento R	Power
9366	12725	Rock Slough	Irrigation, etc.
9367	12726	Rock Slough	Municipal, etc.
9368	12727	Old River	Irrigation, etc.
13892	—	Italian Slough	Irrigation, etc.
14858	16597	Stanislaus R	Irrigation, etc.
14859	16598	Stanislaus R	Power
15764	12860	Old River	Irrigation, etc.
18115	13776	Stony Creek	Irrigation, etc.
20245	—	Old River	Municipal, etc.

7. To the best of affiant's knowledge, neither the United States, nor any agency or official thereof has filed a mandamus proceeding to seek judicial review of Decision 1422 pursuant to the provisions of Water Code Section 1360, within the time prescribed by California law or at any other time.

/s/ Bill B. Dendy
Bill B. Dendy, Executive Officer
State Water Resources Control Board

Sworn to before me this 21 day
of August, 1974.
/s/ Gail F. Draper
Notary Public [4]

DEFENDANTS' EXHIBIT 2

NEW MELONES PROJECT WATER RIGHTS DECISION

DECISION 1422

In the Matter of Applications 14858, 14859, 19303 and 19304 to Appropriate from the Stanislaus River in Calaveras and Tuolumne Counties.

U.S. Bureau of Reclamation,
Petitioner and Applicant

STATE WATER RESOURCES CONTROL BOARD

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State of California
State Water Resources Control Board
Decision 1422

In the Matter of Applications 14858, 14859, 19303 and 19304 to Appropriate from Stanislaus River in Calaveras and Tuolumne Counties.

U. S. BUREAU OF RECLAMATION,
Petitioner and Applicant

DECISION GRANTING PETITION FOR ASSIGNMENT OF APPLICATIONS AND APPROVING APPLICATIONS IN PART

By the Board:

U. S. Bureau of Reclamation, hereinafter referred to as "Bureau" having filed a petition for assignment of Applications 14858* and 14859 and having filed Applications 19303 and 19304 for permits to appropriate unappropriated water; protests having been received; a public hearing having been held before the State Water Resources Control Board commencing on October 26, 1972; applicant, protestants and other persons having appeared and presented evidence; the evidence received at the hearing having been duly considered, the Board finds as follows:

Substance of the Applications

1. (a) Application 14858 is for a permit to appropriate 8,800 cubic feet per second (cfs) by direct diversion, [1]

*Applications 14858 and 14859 were originally filed by the Department of Finance pursuant to Water Code Section 10500 and were subsequently transferred to the State Water Resources Control Board pursuant to Water Code Section 10504. The Bureau has filed a petition for assignment of these applications which petition includes proposed completed applications which petition includes proposed completed applications in its name as required by Water Code Section 10504 and board rule (California Administrative Code, Title 23, Section 800).

year-round, and 980,000 acre-feet per annum (afa) by storage to be collected from October 1 of each year to July 1 of the succeeding year for irrigation, domestic, municipal, industrial, fish culture, recreation and water quality purposes from the Stanislaus River in Calaveras and Tuolumne Counties.

(b) The foregoing information is identical in Application 14859 except that its purpose of use is power generation.

(c) Application 19303 is for a permit to appropriate 6,000 cfs by direct diversion and 2,400,000 afa by storage, both year-round for power generation from Stanislaus River in Calaveras and Tuolumne Counties.

(d) Application 19304 is for a permit to appropriate 2,250 cfs by direct diversion and 2,400,000 afa by storage, both year-round, for irrigation, domestic, municipal industrial, fish culture, recreation and water quality control purposes from the Stanislaus River in Calaveras and Tuolumne Counties.

The primary point of diversion under all four applications is at the proposed New Melones Dam which will be located within the SW¼ of SW¼ of Section 11, T1N, R13E, MDB&M, on the Calaveras County-Tuolumne County boundary line. A proposed Knights Ferry diversion dam which will be located downstream from New Melones Dam within the SW¼ of NE¼ of Section 21, T1S, R12E, MDB&M is also listed as a point of direct diversion under Applications 14858 and 19304. [2]

Applicant's Project

2. The U. S. Corps of Engineers has under construction a multipurpose project, known as New Melones, on the Stan-

islaus River approximately 35 miles northeast of the City of Modesto. The principal feature of the project will be a dam to be constructed approximately three-quarters of a mile downstream from the present Melones Dam and reservoir which has a capacity of 112,000 acre-feet. The new reservoir will have a capacity of 2,400,000 acre-feet and will inundate the existing dam and reservoir. The New Melones project will be operated and maintained by the Bureau and it will be an integrated part of the Central Valley Project (CVP).

The proposed place of use for water conserved by the project, as amended by petition submitted November 16, 1972, includes all of Calaveras, Tuolumne, Stanislaus, San Joaquin and Contra Costa Counties along with the remainder of the CVP service area in San Joaquin and Santa Clara Valleys. The portions of this area which will actually be served with water have not been more specifically identified. The Bureau's economic analysis of the project assumes that some water will be used in the Kaweah River area within the San Joaquin Valley (Staff Exh. 12, p. 8). This would require the construction of conveyance facilities that have not as yet been authorized by Congress. The act of Congress authorizing the project requires that the Stanislaus River basin be given preference in the use of project water. [3]

The project will provide flood protection to approximately 35,000 acres of highly developed agricultural land in the flood plain of the Stanislaus River and to the suburban areas of Ripon, Oakdale and Riverbank. In conjunction with other works it will provide flood protection to agricultural lands along the San Joaquin River and to agricultural lands within the Sacramento-San Joaquin Delta and to suburban areas south of the City of Stockton (RT 25).

The project also will provide water for water quality control and fish and wildlife preservation and enhancement along the Stanislaus River, lower San Joaquin River and possibly provide additional water for water quality control in the Delta (RT 27). Under the terms of an agreement with the California Regional Water Quality Control Board, Central Valley Region, the Bureau has agreed to release up to 70,000 acre-feet of the annual conservation yield of the reservoir to meet water quality objectives.

The project will have power facilities installed immediately below the dam which will consist of two 150 megawatt generators.

Protests to Applications

3. Protests to the applications were filed by numerous individuals, companies, reclamation districts, irrigation districts and other public agencies. Most of the protestants now have no objection to the project and some of the original protestants actually support it. Their principal concern is in the [4] manner in which the project will be operated, particularly in respect to protection of downstream rights, meeting water quality objectives, location of the areas to be served by the project and the purposes for which the water will be used.

Protestants Oakdale and South San Joaquin Irrigation Districts, Tuolumne County Water District No. 2 and Calaveras County Water District have withdrawn their protests to the applications following agreement with the Bureau (USBR Exh. 37; TCWD No. 2 Exh. 1). Any permits issued pursuant to subject applications should be made subject to these agreements.

Protestants Contra Costa County Water Agency, et al in their brief persist in the position taken during the hearing that Board action on the subject applications should be held in abeyance until the Bureau agrees to abide by any permit terms that may be contained in any permits issued pursuant to the applications. A motion to this effect made during the hearing was properly denied.

Protestants Delta Water Agency, Delta Water Users Association, San Joaquin County Flood Control and Water Conservation District, Banta Carbona Irrigation District, Stanislaus River Flood Control Association, Stockton-East Water District and McMullin Reclamation District, et al support the New Melones Project and are in substantial agreement as to special terms to be included in any permits that may be issued. Requested special permit terms are: a term limiting the entire yield of the project to use in Calaveras, Tuolumne, Stanislaus and San Joaquin Counties; [5] terms imposing more stringent standards for the protection of water quality in the lower San Joaquin River and Delta for an interim period, the Board retaining jurisdiction in the matter; a term retaining jurisdiction by the Board over fishery flows; a term retaining jurisdiction by the Board in respect to points of rediversion; and a term subjecting the permits to vested rights (a standard permit term). Also requested to be included is a term that would insure that landowners downstream from the dam will receive the flood control benefits for which the project was authorized and a term requiring the Bureau to promptly negotiate with users of water from the Stanislaus River concerning protection of their existing water rights, with the Board reserving jurisdiction over any permits until it does so; however, these are matters not within the Board's authority. Any permits issued will be subject to all prior rights and will not authorize any interference with such rights.

Protestant Department of Fish and Game has recommended greater releases of water for fishlife than those proposed by the Bureau. It also recommends the acquisition of the remaining riparian habitat along the lower portion of the Stanislaus River for the protection of wildlife; that steps be taken to mitigate destruction of wildlife within the reservoir area; and that the Board retain continuing jurisdiction in the matter of fish releases until further information is obtained (F & G Brief, p. 6).

Protestant Environmental Defense Fund contends the Bureau has failed to justify a project of the magnitude planned [6] and has failed to show that the water will be placed to beneficial use within a reasonable time. It recommends that the applications and petition for assignment of State filings be denied, particularly in view of the adverse effect the project will have on the environment of the area and on whitewater boating.

Protestant Sierra Club contends that there is no water available from the Stanislaus River and lower San Joaquin River for the out-of-basin uses as contemplated by the Bureau, and that the Bureau is not in a position to place the water covered by the permits to beneficial use within a reasonable period of time. It also recommends that the applications and petition for assignment of State filings be denied.

Water Supply

4. The watershed of the Stanislaus River above the proposed New Melones Dam varies in elevation from 1,088 feet to over 10,000 feet at the crest of the Sierra Nevada. The total drainage area is approximately 900 square miles. The annual rainfall averages approximately 27 inches at the damsite and 65 inches in the upper portion of the watershed.

The estimated unimpaired annual flow in the Stanislaus River at Melones Dam has been as low as 261,000 acre-feet and as high as 2,356,900 acre-feet (USBR Exh. 27). The average annual unimpaired flow is approximately 1,100,000 acre-feet (Staff Exh. 12, p. 34).

Oakdale and South San Joaquin Irrigation Districts divert most of the flow of the Stanislaus River other than flood [7] flows into their main canals at Goodwin Dam approximately 12 miles downstream from New Melones. As a result, the river is frequently dry immediately below Goodwin Dam during the summer months.

Water Requirements of Users Holding Prior Rights

5. Oakdale and South San Joaquin Irrigation Districts are the major holders of prior rights to the water from Stanislaus River. They constructed the present Melones Reservoir approximately 45 years ago and in 1957 they completed Tulloch, Donnells and Beardsley Reservoirs known as the Tri-Dam Project. Donnells and Beardsley Reservoirs are on the upper middle fork of the Stanislaus River and Tulloch Reservoir is located on the main stem of the river several miles below Melones Reservoir. The total capacity of the three reservoirs is 230,400 acre-feet. During the period of 1914-1970 the districts' diversions of water from the Stanislaus River under all claims of right have varied from approximately 204,000 acre-feet in 1924 to a high of 597,300 acre-feet in 1962 with an average annual diversion of 409,500 acre-feet. Under the agreement providing for the dismissal of the districts' protests, the Bureau will deliver all of the inflow of the New Melones Reservoir up to 654,000 acre-feet in each year for rediversion at Goodwin Dam in satisfaction of the districts' prior rights.

The ultimate annual demand for Stanislaus River water below Goodwin Dam has been calculated to be 74,500 acre-feet under active and dormant riparian rights, appropriative rights including all applications on file with the Board as of the [8] year 1972, and approximately 9,000 afa for undefined "other rights" (USBR Exhs. 33, 34). All of these uses are by direct diversion with a season that generally extends from March through October (USBR Exh. 19). The Bureau's proposed project could not harm these users during the July through October period as no water is available for the project during that period. Accretions to the river between Goodwin Dam and its mouth will be sufficient to cover rights in that area during the March through June period. A comparison of the records of a gaging station just below Goodwin Dam with a station near the mouth of the river for the months of March through June during the period 1963-1968 indicates an average accretion of 47,440 of USBR (Exhs. 12 and 15). The estimated average ultimate annual requirements of the downstream users during March through June is 35,118 acre-feet. (USBR Exh. 34).

The Stanislaus River watershed upstream from the site of the New Melones Dam includes portions of Alpine, Tuolumne and Calaveras Counties. Use of water from the Stanislaus River in Alpine County is mostly on U. S. Forest Service land and the anticipated demand for water in the county is included in a 2,000 afa allocation by the Bureau for use in the Sanislaus National Forest. Calaveras County Water District holds numerous permits to appropriate water for the development of the Stanislaus River basin. Tuolumne County Water District No. 2 also has undeveloped rights to water in the upper Stanislaus basin. The Bureau has estimated the actual yield of the upstream

rights of both counties to be 312,000 afa by storage and 1,739 cfs by [9] direct diversion (USBR Exh. 31; RT 64). The agreements between the Bureau and Calaveras County, Calaveras County Water District and Tuolumne County Water District No. 2 provide that the Bureau will recognize the prior rights of the counties of origin to divert water from the upper basin as required for their needs. Provision is also made for the counties to contract for a water supply from the yield of New Melones (CC Exh. 1; TCWD Exh. 1).

Availability of Unappropriated Water

6. The Bureau's conclusion as to the extent that water in the Stanislaus River remains unappropriated is based upon its estimate of the unimpaired inflow to the New Melones site for a hydrologic cycle equivalent to the period 1923 through 1953. After deducting the quantity of water necessary for the above-described demands the annual average surplus is an estimated 335,000 acre-feet and varies from zero which occurs in nine years of the period of study to 1,980,000 acre-feet.

The Bureau's Exhibit 32a shows no unappropriated water during the month of October and that month should be eliminated from the diversion season specified in any permits to be issued. Diversion during the months of July through September is precluded by past decisions of the Board, and should also be excluded from the permits.

Unappropriated water is available to supply the Bureau, and, subject to suitable conditions, such water may be diverted and used in the manner proposed without causing any substantial injury to any lawful user of water. [10]

Water Quality

7. The Stanislaus River contributes approximately 25 percent of the annual flow of the San Joaquin River as measured at the USGS gaging station "at Vernalis" and approximately 15 percent of the July through October flow (USBR Exh. 45). The gaging station is just below the confluence of the two rivers. Most of the summer flow in the lower San Joaquin River consists of irrigation return water. The total dissolved solids (TDS) exceed 500 parts per million (ppm) approximately 38 percent of the time during the irrigation season (USBR Exh. 42; RT 235). The Stanislaus River is an important source of dilution water required to reduce the TDS in the lower San Joaquin River to usable levels (Staff Exh. 11, pp. 13, 15, 27).

The Bureau under its agreement with the California Regional Water Quality Control Board, Central Valley Region, plans to release up to 70,000 acre-feet of water in any one year as required to maintain a mean monthly TDS concentration in the San Joaquin River below the mouth of the Stanislaus River at 500 ppm maximum, also to maintain at least five ppm of dissolved oxygen (DO) in the Stanislaus River (Staff Exh. 13). The Bureau estimates that the DO requirement can be met in 10 out of 11 years, assuming a 1975 level of development, with a water quality release averaging 15,520 afa. These releases will be in addition to the Bureau's planned fish releases which amount to 98,000 acre-feet in a normal year. Releases required to meet these water quality objectives would not exceed 70,000 acre-feet maximum until about year 2075 according to a report written by the U. S. Public Health Service (Staff Exh. 11, Table A-4, p. A-12). [11]

However, the ability of the agreed-upon releases to accomplish the water quality objectives depends upon the assumption that the mean TDS concentration of water released from New Melones will be 50 ppm and that the relationship between flows and TDS at Vernalis established by the U. S. Public Health Service (Staff Exh. 11) will continue. These assumptions may not be valid. TDS levels up to 175 ppm have been recorded prior to the construction of the Tri-Dam Project. Also, evaporation at New Melones Reservoir and return flows from future developments upstream could increase salt levels. Only meager data has been presented by the Bureau concerning the flow versus TDS concentrations in the earlier years. There is little basis for concluding that the flow versus TDS relationship at Vernalis is stable on a long-term basis. Also, a problem in predicting the effect of releases of project water on water quality is the failure of the Bureau to specifically designate the place and method of using the conservation yield of the project.

There was considerable evidence presented at the hearing as to what are proper water quality objectives. The Department of Fish and Game has requested a minimum DO of 7 ppm to protect the salmon fishery (RT 526). The Board's Interim Water Quality Control Plan, San Joaquin Basin 5C, specifies that as a result of waste discharges the DO in the Stanislaus River should not fall below 85 percent of the saturation value, which is more restrictive than the DO standard of 5 ppm agreed upon by the Bureau. Protestants Delta Water Agency and Banta-Carbona [12] Irrigation District recommend that the maximum total dissolved solids at Vernalis be 450 ppm at a 14-day running average (RT 911). If these objectives had been met during the

years 1950 through 1969 the Bureau's proposed limit of 70,000 afa would have been exceeded in ten out of the twenty years. (DWA Exh. 24).

In view of the uncertainty inherent in the problem of proper releases to protect water quality, any permits issued pursuant to subject applications should contain an interim term until further studies are made requiring releases of conserved water from New Melones which will maintain a mean monthly TDS concentration in the San Joaquin River at Vernalis of 500 ppm or less and a DO concentration in the Stanislaus River as specified in the Interim Water Quality Control Plan. The Board should reserve jurisdiction over the permits for the purpose of revising water release requirements for water quality objectives.

Consumptive Use of Project Water

8. The Bureau has described the following areas within which the conservation yield of the New Melones Project may be used for irrigation or other consumptive purposes; the local service area consisting of Tuolumne, Calaveras, San Joaquin and Stanislaus Counties; southern San Joaquin Valley via the proposed East Side Canal or a Cross Valley Canal; San Felipe division of the CVP; San Luis unit of the CVP; the area served by the Delta Mendota Canal; the Montezuma Hills Unit of the CVP; and the Suisun Marsh area. [13]

The entire service area which the Bureau has designated as the place of use includes over 11,000,000 acres of land.

There is a future need for additional water supplies in one or more of the above areas. However, the Bureau has presented no specific plan for applying project water to beneficial use for consumptive purposes at any particular

location. Furthermore, the record shows that the CVP has substantial quantities of water that are not being used and are not under contract. The Bureau's own records indicate that without the yield of the New Melones Reservoir the Bureau can meet the estimated buildup of demands under present contracts for a long period of years (USBR Exh. 46 with supplements).

While the Bureau may not be "up to its ears in water" as suggested by Protestant Environmental Defense Fund (EDF Brief, p. 5), there certainly has been no demonstrated need for the additional water supplies developed by this project, outside of the local area. Two aspects of this part of the Bureau's case as to the need for water are disturbing; although this decision is in no way dependent upon the information in question, our concerns will be mentioned.

The effort of the Bureau to obfuscate the effect on the applicant of this Board's Decision 1379 is one of them. The Bureau has stated that its share of the additional Delta outflow required to meet the requirements of Decision 1379 would be 2.2 million afa (RT 186). It has also stated that this amount would be reduced to 1.6 million afa with the Peripheral Canal only, and 1.1 million afa with both the Peripheral Canal and Delta Overland Facilities (USBR Exh. 46). It is our understanding that export of water from the Delta during minimum flow periods in the full amount [14] contemplated by the State and Federal Projects cannot be accomplished without the Peripheral Canal or equivalent facilities (DWR Exh. 502; Staff Exh. 502B, Delta Hearing). Therefore, the significance of the oft-mentioned 2.2 million afa is not apparent.

We are also concerned that the increase in uncommitted yield of the CVP, due to less than expected demand of Sacramento River users, was disclosed more or less as extraneous information, rather than as an integral part of the planning data (RT 745 et. seq.).

By failing to present evidence of a specific plan to use the water conserved by the New Melones Project for consumptive purposes, the Bureau has failed in spirit if not in substance to meet the statutory requirements for approval of a permit to appropriate water for such purposes. While this Board, in the past, has consistently recognized the need to operate facilities of the Central Valley Project in an integrated manner (see Decisions 893, 990, 1356), the law requires the Board to examine each application and determine that the water to be appropriated will be placed to beneficial use (Water Code Sec. 1240). In addition, the specific intended use must be evaluated and found to be reasonable, beneficial and *in the public interest* before a permit can issue. The Board undertakes a balancing of competing demands and policy considerations and has broad discretion (Water Code Sec. 1257, *Temescal Water Co.* v. *Dept. of Public Works*, 44 Cal. 2d 90, 280 P. 2d 1). [15]

The record contains substantial evidence that the full conservation yield of the New Melones Project, and more, will eventually be needed in Tuolumne, Calaveras, San Joaquin and Stanislaus Counties (RT 145-147, 1131). These four counties include substantial areas in the Stanislaus River basin and are considered by the Bureau to be entitled to preference in the use of project water, based on the provisions of Public Law 87-874 and the California County of Origin Law (Water Code Sec. 10505) (RT 144). The Board agrees, as explained later in this decision.

The limited unappropriated water resource of the State should not be committed to an applicant in the absence of a showing of his actual need for the water within a reasonable time in the future. When the evidence indicates, as it does here, that an applicant already has a right to sufficient water to meet his needs for beneficial use within the foreseeable future, rights to additional water should be withheld and that water should be reserved for other beneficial uses. In this case, existing surplus supplies that are available to the Bureau should be utilized before storage is allowed in New Melones Reservoir to satisfy demand for more water in service areas outside of the four basin counties.

Although the full conservation yield of the project will be required for future development of the four basin counties, no facilities have been planned up to now to serve [16] project water in these counties and no contracts have been negotiated for such service. The record is not clear how soon water user agencies will be ready to execute any such contracts.

The lack of evidence that New Melones Project water will be needed for consumptive use outside the four basin counties for many years to come, if ever, or that it will be used within those counties at any definite time in the future, raises substantial doubt whether permits should be issued to impound more water in New Melones Reservoir, at least at this time, than is needed for satisfaction of prior rights and non-consumptive purposes—protection and enhancement of fish and wildlife, water quality, recreation and generation of power.*

*Permits to impound water for flood control are not required and were not requested.

To help resolve this doubt the Board must consider any adverse consequences of such impoundment. The proposed reservoir would inundate approximately 13 miles of river upstream from the existing Melones Reservoir, including approximately 9 miles above Parrotts Ferry Bridge now being used for whitewater recreation. Any storage of water above the levels of the existing Melones Reservoir will conflict with use of the upper reach for whitewater boating, stream fishing, and other stream-related activities.

Protestant Environmental Defense Fund estimates that in the year 1971 use of the river for whitewater recreation amounted to over 23,000 visitor days and that such use may eventually increase to 90,000 visitor days per year (EDF Exh. 1; RT 1059). It has been estimated that visitors using the services [17] of commercial river runners spent approximately $730,500 in 1971. The project's recreational features would not adequately substitute for the present recreational uses of the river in the upstream reach. A study by the Water Resources Council indicates that the New Melones site does not lie within one of the regions which will require additional reservoir recreation areas by the year 2020 (EDF Exh. 7). There are numerous other reservoirs already in the same region (EDF Exh. 6); further, a lake fishery is not adequate replacement for a stream fishery, insofar as many users are concerned. While stream fishing downstream from the reservoir would be enhanced, it would be practically eliminated in the area to be inundated, together with other stream-related activities and wildlife habitat. Although there would still be opportunity for stream-related activities above Camp Nine, that area is less accessible and would not readily absorb users displaced from the lower reach.

In view of the preponderance of the adverse consequences of maintaining a reservoir of the size proposed by the Bureau, the public interest requires that any permits issued pursuant to Applications 14858 and 19304 prohibit the impoundment of water in New Melones Reservoir for consumptive purposes until further order of the Board following a showing that the benefits that will accrue from a specific proposed use will outweigh any damage that would result to fish, wildlife and recreation in the watershed above New Melones Dam and that the permittee has firm commitments to deliver water for such purposes. [18]

Because of the lack of a showing of need for water from the New Melones Project outside the counties of Calaveras, Tuolumne, Stanislaus and San Joaquin, the permits should restrict the place of use of water for consumptive purposes to those counties, but should provide that a petition to include other specific areas will be considered by the Board upon a showing that water from other CVP sources is not available to serve such areas. The permits should further provide that any use of water for consumptive purposes outside the four basin counties shall be subordinate to beneficial use within said counties and shall terminate when contracts are executed and the water is needed within said counties. Such a provision is necessary to conform to the preference given to use within the Stanislaus River Basin by the authorizing act of Congress (P.L. 87-874), and a similar preference given to the counties of origin and to the watershed of origin and areas immediately adjacent thereto by state law (see Water Code Secs. 10505 and 11460).

Even without storage of water for consumptive use, a substantial part of the 9-mile reach of river channel above Parrotts Ferry Bridge will be inundated at times. A reservoir of 1,100,000 acre-feet, the approximate size estimated to be required to provide for prior rights, flood control, and for water for the previously discussed non-consumptive uses, would inundate all but the upper few miles of this reach. However, 450,000 acre-feet of the 1,100,000 acre-feet is required for flood control. There would be parts of all years, and some entire years, when the flood space would be empty. With the flood space empty, only about 2½ miles of the nine-mile reach would be inundated. Further drawdown into the conservation storage range, which would be the usual summer [19] occurrence, would make even more of the whitewater reach available.

It is apparent that intermittent inundation of the whitewater reach would degrade the appearance of the stream to some extent. However, it should not be necessary to maintain high water levels for long periods. The canyon is steep sided and extensive mud flats should not form. On the whole, degradation of the esthetic values is expected to be minimal.

Releases of Project Water for Preservation and Enhancement of Fishlife

9. Applications 14858 and 19304 list "fish culture" as a purpose. The Bureau proposes to release water from New Melones Reservoir for the preservation and enhancement of fishlife, rather than actually engaging in the raising of fish, and the permits should be issued accordingly.

The value of the Stanislaus River as a salmon fishery resource has been estimated to be $300,000 per year (RT 52).

Revised Department of Fish and Game recommendations now call for releases of 262,000 afa from New Melones Reservoir for preservation and enhancement of the fishery in the Stanislaus River and an additional 50,000 afa for the

same purposes in the Delta in a normal year. The drastic revision upward is due, in part, to a belief on the part of the Department that it is the ability of the spring flows to flush juvenile salmon to the ocean which determines the success of the spawning run two and one-half years later when the same salmon return to the river.

There are a number of factors besides flows which affect the salmon run in the Stanislaus River. Further study of the matter is needed, which should include such factors as the feasibility of providing a fish hatchery instead of large river flows. [20]

Any permits issued pursuant to Applications 14858 and 19304 should contain terms requiring the release of up to 98,000 afa for maintenance of fish and wildlife as planned by the Bureau to be released at a rate and during periods specified by the Department of Fish and Game. Jurisdiction should be reserved by the Board to later revise the releases for preservation and enhancement of fish and wildlife upon reviewing the results of further studies, as mentioned above. Such studies were proposed by the Bureau and agreed to by the Department of Fish and Game. The joint investigation should include an attempt to determine the optimum balance between maximizing fish and wildlife benefits while minimizing reservoir storage levels, during the period prior to storage of water for consumptive uses.

Dry Year Criteria

10. Formal dry year criteria for the benefit of consumptive uses will not be specified at this time since the Board is making no allocation of water for irrigation, domestic, municipal and industrial uses. However, the Board will reserve jurisdiction until the conservation yield is fully allocated to provide such dry year criteria as appear warranted after further hearing.

Hydroelectric Power Development

11. Inasmuch as there is considerable question as to the need for appropriation of water in the proposed quantities for purposes other than the generation of power, it is necessary to determine if the project's power benefit alone justifies storage in addition to that presently needed for other purposes. [21]

Previous mention has been made of the fact that any increase in storage conflicts with use of the upper river for whitewater recreation, stream fishing and wildlife. If as the demand for water for consumptive uses increases and storage for those uses is authorized, storage for power purposes will also be considered. The immediate question, therefore, is whether the need for maintaining the present regimen of the stream outweighs the need for an additional increment of generating capacity during the interim period.

The Bureau calculates the annual benefits of the power function of the proposed project to be over five and one-half million dollars. Restriction of storage for power purposes to the amount required for satisfaction of prior rights and flood control plus the amount allowed for fish and wildlife and water quality control would reduce the capacity of the powerplant from 300 megawatts, with an annual electrical energy production of 430,000 megawatt-hours, to some lesser but undetermined production. The opportunity to contribute to the solution of the present power supply problems should not be overlooked. However, the project was not proposed as a means of alleviating the power shortage and the Bureau did not offer evidence to show that full approval of its power applications would decrease the need for development of other sources of power.

Although maintenance of the upstream reach of the river in its present state solely for recreational uses cannot be

justified strictly on an economic basis. The recreational uses in question have a value beyond that described by dollar resources only. [22]

Opportunities for lake fishing are relatively abundant in California and stream fishing does not appear to be critically lacking. However, the tendency of increased levels of development is to replace stream fisheries with lakes. Therefore, when a choice must be made between two alternates which will result in different types of fisheries, extra weight should be attached to the value of a stream fishery.

The situation with respect to whitewater boating is analogous to that of the fisheries. While the opportunities for flat water boating are abundant, streams suitable for whitewater boating are extremely scarce (RT 1061); also, the Stanislaus may be the second most heavily used river in the nation for that purpose in actual number of visitors per year (RT 1062). In fact, the Bureau has contended that overuse of the river may become a problem.

If the Bureau eventually substantiates the need for storage for consumptive use purposes out-of-basin (such as in the San Luis service area), large quantities of power will be required to deliver the water. At such time, development of the full power potential of New Melones should be considered to offset the increased pumping demand insofar as possible. In the meantime, any power developed at New Melones in excess of the losses in production expected at the existing Melones and Tulloch Powerhouses will be a net gain to the pool of available power. If substantial basin exports are allowed in the future, the balance may shift to a net loss, even with increased production at New Melones. [23]

In view of the foregoing, the Board finds that the reach of river in question is a unique asset to the state and the

nation. Until the need for water for consumptive purposes dictates approval of increased storage, the public interest requires that storage for power purposes also be kept at reduced levels. Permits issued pursuant to Applications 14859 and 19303 for power purposes should be limited to the amount of conservation storage authorized under the permits issued pursuant to Applications 14858 and 19304. Direct diversion under Applications 14859 and 19303 for power purposes should be limited to 6,000 cfs which will be the capacity of the proposed penstocks.

Assignment of State Applications 14858 and 14859 Held by the Board

12. The Board may assign any applications filed in accordance with Water Code Section 10500 and held by the Board when the assignment is for the purpose of development not in conflict with a general or coordinated plan looking toward the development, utilization, or conservation of the water resources of the State or with water quality objectives established pursuant to law (Water Code Sec. 10504). Further, no such assignment shall be made that will deprive the county in which the water covered by the application originates of any such water necessary for the development of the county (Water Code Sec. 10505). [24]

The Bureau's project is not in conflict with any such general plan looking toward the development, utilization or conservation of the water resources of the State or with water quality objectives. The California Water Plan provides for the enlargement of existing Melones Reservoir to the capacity of 1,100,000 acre-feet (DWR Bulletin 3, p. 130). The use of a portion of the conservation yield of New Melones Reservoir for water quality control is in keeping

with water quality objectives for the lower San Joaquin River. Assignment of the applications should be subject, in conformity with Section 10505 of the Water Code, to any and all rights of any county in which the water sought to be appropriated originates to the extent that any such water may be necessary for the development of such county. As so conditioned, the assignment will not deprive any such county of any water necessary for its development. Any permits issued pursuant to the applications should contain a similar term.

The counties of origin are further protected by Public Law 87-874. It provides that the needs of the Stanislaus River basin have priority in allocating project water.

The Board's Jurisdiction

13. The regional solicitor, who is the Bureau's legal representative in this proceeding, reiterates the official position that has been advanced by him in previous proceedings before this Board, that we have no jurisdiction to impose any conditions or limitations upon the Bureau's permits. He argues that the Board's function is "ministerial"; that having determined that unappropriated water exists, a permit for the unappropriated water then follows "as a matter of course" (USBR Opening Brief, p. 10). [25]

Such an interpretation of the Board's authority is not supported by either statutory or case law and is not even consistent with other portions of the solicitor's brief or with the Bureau's conduct with respect to previous applications that have been acted upon by the Board and its predecessors. The solicitor himself proposes a special permit term requiring the Bureau to conduct certain studies related to the fishery in the Stanislaus River (USBR Opening Brief, p. 3).

Rather than an extended legal discussion at this time we feel it is sufficient to reaffirm the views expressed in previous decisions concerning the need for the Bureau to comply with state law when it applies to the state for a right to appropriate water of the state. See Decision 990 approving applications of the Bureau for the CVP and Decision 1379 exercising jurisdiction reserved in Decision 990.

Summary

There is unappropriated water available to satisfy the demands of the project as proposed. However, the Bureau has no definite plan as to when or at what specific locations project water will be used for consumptive purposes outside the four basin counties, and it has sufficient surplus water from other sources to meet future increased demands outside these counties for a long period of years. Permits should not be issued for use of water outside these counties at this time.

The public interest requires that the use of the Stanislaus River for whitewater boating, stream fishing and wildlife habitat be protected to the extent that water is not needed for [26] other beneficial uses. Therefore, although there is a demonstrated need for the full yield of the project in the four basin counties at some time in the future, but for which no contracts have been negotiated, and in view of the adverse effect the proposed reservoir will have upon these recreational uses, impoundment of water to satisfy that need should not be permitted at this time. Instead, the Board should retain jurisdiction over the permits for the purpose of approving incremental appropriations for consumptive use up to the quantities covered by the applications when the need for the water is substantiated.

Appropriations by storage should be allowed of sufficient water to provide for the preservation and enhancement of fishlife up to 98,000 afa. Storage should also be allowed to meet TDS objectives of 500 ppm and DO objectives as required by the Interim Water Quality Control Plan. The Board should retain jurisdiction for the purpose of conforming the permits to demonstrated needs for water for such purposes. Storage of water should also be allowed to replace water stored in the existing Melones Reservoir which will be inundated. The season of diversion to storage should conform to the availability of unappropriated water; namely, November through June.

Beneficial use of project water can be made for the generation of power. However, preservation of the existing upstream reach of the river for recreation values conflicts with increased storage for power purposes. Therefore, storage for power generation should be approved, but limited to the amount authorized for other project purposes. [27]

By dedicating the initial project yield to demonstrated needs for flows for water quality control and for fish and wildlife preservation and enhancement and allowing use of these flows for power generation, and by deferring significant impairment of upstream recreational values until a need for other uses is demonstrated, the Board's decision assures the maximum public benefit and maximum utilization of the available resources in the public interest.

From the foregoing findings, the Board concludes that Applications 14858 and 14859 should be assigned to the Bureau; that they and Applications 19303 and 19304 should be approved in part and that permits should be issued to the Bureau subject to the limitations and conditions set forth in the order following:

ORDER

IT IS HEREBY ORDERED that Applications 14858 and 14859 be, and they are, assigned to the United States Bureau of Reclamation, subject, in conformity with Section 10505 of the Water Code, to any and all rights of any county in which the water sought to be appropriated originates to the extent that any such water may be necessary for the development of such county.

IT IS FURTHER ORDERED that Applications 14858, 14859, 19303 and 19304 be approved in part, and that permits be issued to the United States Bureau of Reclamation subject to the following conditions and limitations: [28]

1-a. The water appropriated under the permit issued pursuant to Application 14858 shall be limited to the quantity which can be beneficially used and shall not exceed 980,000 acre-feet per annum by storage to be collected from November 1 of each year to June 30 of the succeeding year. Until further order of the State Water Resources Control Board, the water shall be used only for preservation and enhancement of fish and wildlife, recreation and water quality control purposes.

1-b. The water appropriated under the permit issued pursuant to Application 14859 shall be limited to the quantity which can be beneficially used and shall not exceed 6,000 cubic feet per second by direct diversion to be diverted from January 1 to December 31 of each year and 980,000 acre-feet per annum by storage to be collected from November 1 of each year to June 30 of the succeeding year to be used for power purposes.

1-c. The water appropriated under the permit issued pursuant to Application 19303 shall be limited to the quantity which can be beneficially used and shall not exceed 1,420,000 acre-feet per annum to be collected from Novem-

ber 1 of each year to June 30 of the succeeding year to be used for power purposes.

1-d. The water appropriated under the permit issued pursuant to Application 19304 shall be limited to the quantity which can be beneficially used and shall not exceed 1,420,000 acre-feet per annum by storage to be collected from November 1 of each year to June 30 of the succeeding year. Until further order of the State Water Resources Control Board, the water shall be used only for preservation and enhancement of fish and wildlife, recreation and water quality control purposes. [29]

2. Until further order of the Board, permittee shall impound in New Melones Reservoir only such water as is necessary to provide (a) not in excess of 98,000 acre-feet per annum for the preservation and enhancement of fish and wildlife to be released at a rate specified by the California Department of Fish and Game, plus (b) such additional water as is necessary to maintain the water quality conditions set forth in paragraph 5. The above amounts are in addition to water stored for satisfaction of prior rights at existing Melones Reservoir and for flood control. No additional impoundment shall be allowed for power and recreational purposes. Further order of the Board shall be preceded by a showing that the benefits that will accrue from a specific proposed use will outweigh any damage that would result to fish, wildlife and recreation in the watershed above New Melones Dam and that the permittee has firm commitments to deliver water for such other purposes. The Board reserves jurisdiction for the purpose of establishing dry year criteria at the time such impoundment is approved.

3. Before any water is impounded in New Melones Reservoir, permittee shall file with the Board a reservoir

operation study showing the water level elevations required to provide the yield specified in paragraph 2. The study shall include details of the permittee's proposed reservoir clearing plan to show the manner in which clearing will progress as additional storage is authorized. A reservoir operation schedule [30] shall be submitted by the permittee which shall be subject to approval of the Board. The study shall be updated at least once every five years until further order of the Board.

4. Permits issued pursuant to Applications 14858 and 19304 shall authorize the use of water for consumptive purposes only in the counties of Stanislaus, Calaveras, Tuolumne and San Joaquin. A petition to amend the permits to include other specific areas will be considered by the Board upon a showing that water from other CVP sources is not available to serve such areas. Any use of water for consumptive purposes outside the counties of Stanislaus, Calaveras, Tuolumne and San Joaquin that may be authorized later shall be subordinate to beneficial use within said counties and shall terminate when contracts are executed and the water is needed for beneficial use within said counties.

5. Releases of conserved water from New Melones Reservoir for water quality control purposes shall be scheduled so as to maintain a mean monthly total dissolved solids concentration in the San Joaquin River at Vernalis of 500 parts per million or less and a dissolved oxygen concentration in the Stanislaus River as specified in the Water Quality Control Plan (Interim), San Joaquin River Basin 5C, State Water Resources Control Board, June 1971.

In the event that the Water Quality Control Plan (Interim) is amended or superseded, the foregoing water

quality objectives shall be modified to conform to then current criteria. [31]

6. The State Water Resources Control Board reserves jurisdiction over these permits for the purpose of revising water release requirements for water quality objectives and fish releases and for establishing dry year criteria pursuant to studies to be conducted by the permittee and other parties in an effort to better define water needs.

7. Permittee shall file with the Board at least biennially a report of water diversions and use along the Stanislaus River and San Joaquin River between New Melones Dam and the Vernalis gage which will show any increased diversions subsequent to the beginning of releases of water under this permit, which diversions may be encroaching on the water supply provided for preservation and enhancement of fish and wildlife and for water quality control, and will show what steps, if any, permittee is taking to prevent any such encroachment.

8. Permittee shall file with the Board an annual report showing (a) daily storage level in New Melones Reservoir, (b) daily record of total dissolved solids at Vernalis, and (c) daily record of minimum dissolved oxygen level for the day at Ripon or at an alternate location approved by the Board.

9. The maximum quantities stated herein may be reduced in the license if investigation warrants.

10. Construction work shall be completed on or before December 1, 1980.

11. Complete application of water to the uses authorized by the permit shall be made on or before December 1, 1990. [32]

12. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until license is issued.

13. All rights and privileges under this permit, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

This continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to minimizing waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement such programs as (1) reusing or reclaiming the water allocated; (2) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (3) suppressing evaporation losses from water surfaces; (4) controling phreatophytic growth; and (5) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation. [33]

14. This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.

15. Permittee shall allow representatives of the State Water Resources Control Board and other parties, as may be authorized from time to time by said Board, reasonable

access to project works to determine compliance with the terms of this permit.

16. In compliance with Section 5943 of the Fish and Game Code, permittee shall accord to the public, for the purpose of fishing, reasonable right of access to the waters impounded by the dam under this permit during the open season for the taking of fish subject to the regulations of the Fish and Game Commission.

17. Permittee shall install and maintain an outlet pipe of adequate capacity in his dam as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Resources Control Board, in order that water entering the reservoir which is not authorized for appropriation under this permit may be released.

18. In accordance with the requirements of Water Code Section 1393, permittee shall clear the site of the reservoir of all structures, trees, and other vegetation which would interfere with the use of the reservoir for water storage and recreational purposes. This provision, however, shall not preclude the permittee from retaining vegetation cover in selected areas as required for the protection of wildlife. Clearing operations shall be coordinated with authorized increases in storage levels. [34]

19. Rights under this permit are, and shall be, subject to existing rights determined by the Stanislaus River Adjudication Decree of Superior Court of San Joaquin County dated November 14, 1929, Action No. 16873 with Supplemental Decrees dated February 24, 1930; March 8, 1934; May 8, 1935 and November 29, 1960, insofar as said adjudicated rights are maintained, and such other rights as may presently exist.

20. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

21. In order to prevent degradation of the quality of water during and after construction of the project, permittee shall file immediately a report pursuant to Water Code Section 13260 and shall comply with any waste discharge requirements imposed by the California Regional Water Quality Control Board, Central Valley Region, or by the State Water Resources Control Board. [35]

22. Before making any change in the project determined by the State Water Resources Control Board to be substantial, permittee shall submit such change to the Board for its approval in compliance with Water Code Section 10504.5(a).

23. This permit shall be subject to appropriation by storage upstream from New Melones Reservoir for stockwatering and recreational purposes, provided the individual capacities of reservoirs for such purposes do not exceed 10 acre-feet and the reservoirs are kept free of phreatophytes.

24. This permit shall be subject to the following agreements between the permittee and other parties:

(a) The "Agreement and Stipulation" dated October 24, 1972 and executed by the permittee, Oakdale Irrigation District and South San Joaquin Irrigation District.

(b) The agreement between the permittee and Tuolumne County Water District No. 2 dated November 29, 1972.

(c) The agreement dated July 31, 1972 between permittee and Calaveras County Water District.

Reference to the above three agreements shall not be construed as a finding by the State Water Resources Control Board with respect to the rights of any of the parties involved.

25. This permit does not authorize the use of any water outside the counties of origin which is necessary for the development of the counties. [36]

IT IS FURTHER ORDERED that the hearing on this matter will be reconvened not later than July 1, 1986 for the purpose of considering the status of the items of reserved jurisdiction.

Dated: April 4, 1973

/s/ W. W. ADAMS
W. W. Adams, Chairman

/s/ RONALD B. ROBIE
Ronald B. Robie, Vice Chairman

/s/ E. F. DIBBLE
E. F. Dibble, Member

/s/ ROY E. DODSON
Roy E. Dodson, Member

/s/ MRS. CARL H. AUER
Mrs. Carl H. (Jean) Auer,
Member [37]

DEFENDANTS' EXHIBIT 3(a)

State of California
the Resources Agency

State Water Rights Board

APPLICATION TO APPROPRIATE WATER

Proposed Completed Application
Received 6-22-67 by SWRB

Application No. 14858 Filed June 16, 1952 at 11:01 A.M.
The United States of America (See Supplement)

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does hereby make application for a permit to appropriate the following described unappropriated waters of the State of California, SUBJECT TO VESTED RIGHTS:

1. The source of the proposed appropriation is Stanislaus River located in Calaveras & Tuolumne Counties, Tributary to San Joaquin River.

2. The amount of water which applicant desires to appropriate under this application is as follows:

(a) To be directly applied to beneficial use 8,800 cubic feet per second to be diverted from January 1 to December 31 of each year.

(b) To be stored and later applied to beneficial use 980,000 acre-feet per annum, to be collected between October 1 to July 1 of each season.

3. The use to which the water is to be applied is irrigation, domestic, municipal, industrial, fish culture, recreation, and water quality control purposes. [1]

• • •

9.

• • •

(c) The estimated total cost of the diversion works proposed is $133,000,000

• • •

COMPLETION SCHEDULE

10. (a) Construction work will begin on or before 1966
(b) Construction work will be completed on or before 1971
(c) Water will be completely applied to the proposed use on or before 1990

DESCRIPTION OF PROPOSED USE

• • •

San Joaquin Valley and Sacramento-San Joaquin Delta, within 8,000,000 gross acres shown on Drawings No. 214-208-5075, -5076, -5077, and -5078. Releases to the Delta will be redelivered for use in Delta and on Westside of the San Joaquin Valley and the South Coast as shown on the drawings.

Does applicant own the land where use of water will be made? No Jointly?
Contracts will be negotiated with representatives of owners. [2]

• • •

17. Other Uses. The nature of the use proposed is municipal, industrial, fish culture, recreation, and water quality control.
State basis of determination of amount needed Amount needed determined by agencies, departments, and bureaus having special knowledge of the particular requirement. Individual needs and requirements are discussed in House Document No. 453, 87th Congress, 2d Session. [3]

• • •

19. Does the applicant own the land at the proposed point of diversion? No. If not, give name and address of owner and state what steps have been taken to secure right of access Land will be acquired by purchase or condemnation pursuant to law.

20. What is the name of the post office used by those living near the proposed point of diversion? Knights Ferry, California

21. What are the names and addresses of diverters of water from the source of supply below the proposed point of diversion? Oakdale Irrigation District, South San Joaquin Irrigation District, and others.

22. (a) Have you investigated the effect of the proposed appropriation on fish and wildlife? Yes (b) Have you consulted with the State Department of Fish and Game concerning this proposed appropriation? Yes (c) Will your proposed diversion or impoundment of water beneficially or adversely affect fish and wildlife? Enhance fish and wildlife (d) State all data and information reasonably available to you or that can be obtained from the California Department of Fish and Game concerning the extent, if any, to which fish and wildlife would be affected by the appropriation. (Attach further supplement if necessary.) Coordinated planning efforts with U.S. Fish and Wildlife Service have included extensive consultation with the California Department of Fish and Game. Their comments and recommendations are contained in the Department of Water Resources letter dated December 9, 1960, contained in House Document 453, 87th Congress, 2d Session. (e) Describe any measures you propose to take for the protection of fish and wildlife in connection with the appropriation. (Attach further supplement if necessary.) Measures to be taken for the protection of

fish and wildlife are described in House Document 453, 87th Congress, 2d Session, as subsequently modified. (See Supplement) [4]

SUPPLEMENT TO APPLICATION 14858

The United States of America, pursuant to the provisions of the Act of June 17, 1902, (32 Stat. 388) and acts amendatory thereof or supplementary thereto, known as the Federal Reclamation laws, and acting for this purpose by R. J. Pafford, Jr., Regional Director, Bureau of Reclamation, Region 2, P. O. Box 15011, Sacramento 95813, County of Sacramento, State of California, acting for this purpose by delegation of authority from the Secretary of the Interior through the Commissioner of the Bureau of Reclamation, pursuant to the Act of Congress of December 19, 1941, c. 595 (55 Stat. 842).

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PARAGRAPH 2 : Amount of Water

The direct diversion of 8,800 c.f.s. applied for in this application can be a part of the direct diversion applied for in the power generation Application (14859).

Quantities of water temporarily stored and later released to provide flood control space will be in addition to the 2,400,000 acre-feet specified in this application.

PARAGRAPH 4: Points of Diversion and Rediversion

New Malones Dam shall be considered as a point of diversion for all the stored water and part of the direct diversion applied for, although physical works may be located on the bank of the reservoir.

Stored water released from New Melones Reservoir may be rediverted at the Knights Ferry Diversion Dam. Most of the direct diversion applied for will be diverted at

Knights Ferry Diversion Dam, which will be located within the SW¼, NE¼ Section 21, T.1S., R.12E. Diversions and rediversions at Knights Ferry will be conveyed, as required, via the proposed Stanislaus-Montgomery Canal to Montgomery Reservoir for re-regulation and release to the East Side Canal. [1]

• • •

PARAGRAPH 5: Main Conduit

Several distribution systems will ultimately be constructed, each diverting from a different point on the reservoir or rediverting, downstream of New Melones Dam, diversions made from the dam. The Stanislaus-Montgomery Canal, heading at Knights Ferry Diversion Dam below New Melones, will terminate in SW¼ of SW¼ Section 5, T.4S., R.14E., MDB&M.

PARAGRAPH 6(b): Intake or Headworks

The Knights Ferry Diversion Dam, also a point of diversion, will be 160 feet in height, 770 feet long, and will be constructed of concrete.

PARAGRAPH 8: Conduit System

Conduit systems will be installed at such locations, and of such size, as future growth and development within the designated place of use may dictate.

• • •

PARAGRAPH 13: Irrigation Use

The area to be irrigated is presently indeterminate. When operative, the project will supply supplemental water, and the expected flexibility of operation precludes any acreage estimate by crops.

PARAGRAPH 15: Municipal Use

A portion of this water will be supplied, pursuant to Reclamation law, to cities, towns, and other municipalities presently in existence or as may be developed within the place of use. [3]

PARAGRAPH 22(e): Fish and Wildlife

In the conclusions and recommendations that were enclosed with the Assistant Secretary of the Interior's letter dated April 25, 1962, published in House Document No. 453, 87th Congress, 2d Session, the Bureau of Sport Fisheries and Wildlife recommended that approximately 3,400 acres of privately owned riparian land along the Stanislaus River downstream from Knights Ferry Bridge to the San Joaquin River to be acquired in fee, and that approximately 7,230 acres of public domain and private land along the east side of the reservoir be acquired for use as a recreational and wildlife management area. This latter recommendation was changed in their reports. In a letter dated February 28, 1967, they indicated that the area most feasible for establishment of a wildlife unit is an area of 1,790 acres located in the Peoria Mountain area south of New Melones Reservoir site. In addition they recommend that lands acquired for other project purposes be used for wildlife purposes. These lands were recommended for acquisition to mitigate the approximate 10,000 acres of wildlife habitat that would be lost with the construction of the project. The Bureau of Sport Fisheries and Wildlife in their report dated August 14, 1962, recommended that $25,000 be provided to the California Department of Fish and Game for habitat improvement on these lands. The foregoing recommendations were amended by letter from the Regional Director to the District Engineer dated July 30, 1964, to

reflect the following requirements for fish and wildlife mitigation: (a) that downstream riparian habitat lands amounting to 2,130 acres of private land be acquired in fee; (b) that 5,800 acres of land adjacent to the reservoir be acquired, including withdrawal of 2,525 acres of public land; and (c) that project funds amounting to about $120,000 be allocated for wildlife habitat development on the 5,800 acres cited above, and project funds amounting to about $9,000 annually be provided for operation and maintenance of these lands. [4]

State of California—Department of Public Works
Division of Water Resources

STATE ENGINEER

Application No. 14858 Filed June 16, 1952 at 11:01 A.M.

APPLICATION TO APPROPRIATE
UNAPPROPRIATED WATER

I, The Department of Finance of the State of California under and pursuant to the authority vested in it by Part 2, Division 6, of the Water Code of the State of California, does hereby make application for a permit to appropriate the following described unappropriated waters of the State of California, *SUBJECT TO VESTED RIGHTS:*

Source, Amount, Use and Location of Diversion Works

1. The source of the proposed appropriation is Stanislaus River located in Calaveras & Tolumne Counties, tributary to San Joaquin River

2. The amount of water which applicant desires to appropriate under this application is as follows:

(a) For diversion to be directly applied to beneficial use 8800 cubic feet per second, to be diverted from January 1 to December 31 of each year.

(b) For diversion to be stored and later applied to beneficial use 980,000 acre-feet per annum, to be collected between October 1 and July 1 of each season.

3. The use to which the water is to be applied is irrigation, domestic and flood control purposes.

7. Storage Reservoir New Melones Reservoir

• • •

DESCRIPTION OF PROPOSED USE

11. Place of Use. 703,000 acres within Eastern Stanislaus County and Southeastern San Joaquin County

State of California, Department of Finance
[SIGNATURE OF APPLICANT] By James S. Dean
James S. Dean, Director of Finance

This is to certify that the application of which the foregoing is a true and correct copy has been considered and is hereby approved SUBJECT TO VESTED RIGHTS and the following limitations and conditions:

1. The amount of water appropriated shall be limited to the amount which can be beneficially used, and shall not exceed .....

2. The maximum amount herein stated may be reduced in the license if investigation so warrants.

3. Actual construction work shall begin on or before ..... and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted this permit may be revoked.

4. Said construction work shall be completed on or before .....

5. Complete application of the water to the proposed use shall be made on or before .....

6. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Engineer until license is issued.

7. All rights and privileges under this permit including method of diversion, method of use and quantity of water diverted are subject to the continuing authority of the Department acting through the State Engineer in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for

purposes of sale or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Witness my hand and the seal of the Department of Public Works of the State of California this day of 19

A. D. EDMONSTON,
State Engineer

DEFENDANTS' EXHIBIT 3(b)

State of California
The Resources Agency

State Water Rights Board

APPLICATION TO APPROPRIATE WATER

Proposed Completed Application
Received 6-22-67 by SWRB

Application No. 14859 Filed June 16, 1952 at 11:01 A.M.

The United States of America (See Supplement) does hereby make application for a permit to appropriate the following described unappropriated waters of the State of California, SUBJECT TO VESTED RIGHTS:

1. The source of the proposed appropriation is Stanislaus River located in Calaveras & Tuolumne Counties, Tributary to San Joaquin River.

2. The amount of water which applicant desires to appropriate under this application is as follows:

(a) To be directly applied to beneficial use 8,800 (See Supplement) cubic feet per second to be diverted from January 1 to December 31 of each year.

(b) To be stored and later applied to beneficial use 980,000 acre-feet per annum, to be collected between October 1 to July 1 of each season.

3. The use to which the water is to be applied is power purposes.

4. The point(s) of diversion is (are) to be located as follows: At New Melones Dam. [1]

• • •

9.

• • •

(c) The estimated total cost of the diversion works proposed is $133,000,000.

COMPLETION SCHEDULE

10. (a) Construction work will begin on or before 1966.

(b) Construction work will be completed on or before 1971.

(c) Water will be completely applied to the proposed use on or before 1990.

DESCRIPTION OF PROPOSED USE

• • •

Water will be used in New Melones powerplant for the production of electric energy for domestic and industrial use within the areas served by systems interlocked with Central Valley Project.

Does applicant own the land where use of water will be made? No Jointly?

Contracts will be negotiated with owners or their representatives. [2]

• • •

19. Does the applicant own the land at the proposed point of diversion? No. If not, give name and address of owner and state what steps have been taken to secure right of access. Land will be acquired by purchase or condemnation pursuant to law.

20. What is the name of the post office most used by those living near the proposed point of diversion?

Knights Ferry, California.

21. What are the names and addresses of diverters of water from the source of supply below the proposed point of diversion? Oakdale Irrigation District, South San Joaquin Irrigation District, and others.

22. (a) Have you investigated the effect of the proposed appropriation on fish and wildlife? Yes (b) Have you consulted with the State Department of Fish and Game concerning this proposed appropriation? Yes (c) Will your proposed diversion or impoundment of water beneficially or adversely affect fish and wildlife? Enhance fish and wildlife (d) State all data and information reasonably available to you or that can be obtained from the California Department of Fish and Game concerning the extent, if any, to which fish and wildlife would be affected by the appropriation. (Attach further supplement if necessary.) Coordinated planning efforts with U.S. Fish and Wildlife Service have included extensive consultation with the California Department of Fish and Game. Their comments and recommendations are contained in the Department of Water Resources' letter dated December 9, 1960, contained in House Document 453, 87th Congress, 2d Session. (e) Describe any measures you propose to take for the protection of fish and wildlife in connection with the appropriation. (Attach further supplement if necessary.) Measures to be taken for the protection of fish and wildlife are described in House Document 453, 87th Congress, 2d Session, and as subsequently modified. (See Supplement)

Signature of applicant(s)

/s/ R. J. Pafford, Jr.
Regional Director, Region 2
Bureau of Reclamation [4]

SUPPLEMENT TO APPLICATION 14859

The United States of America, pursuant to the provisions of the Act of June 17, 1902, (32 Stat. 388) and acts amendatory thereof or supplementary thereto, known as the Federal Reclamation laws, and acting for this purpose by R. J. Pafford, Jr., Regional Director, Bureau of Recla-

mation, Region 2, P. O. Box 15011, Sacramento 95813, County of Sacramento, State of California, acting for this purpose by delegation of authority from the Secretary of the Interior through the Commissioner of the Bureau of Reclamation, pursuant to the Act of Congress of December 19, 1941, c. 595 (55 Stat. 842).

PARAGRAPH 2: Amount of Water

A direct diversion of 6,000 c.f.s. will be made through the powerplant located at New Melones Dam.

The 2,400,000 acre-feet will be stored at rates equal to the flow of all presently unappropriated flows above New Melones. Any water temporarily stored and later released to provide flood control space will be in addition to the 2,400,000 acre-feet specified in the application.

PARAGRAPH 22(e): Fish and Wildlife

In the conclusions and recommendations that were enclosed with the Assistant Secretary of the Interior's letter dated April 25, 1962, published in House Document No. 453, 87th Congress, 2d Session, the Bureau of Sport Fisheries and Wildlife recommended that approximately 3,400 acres of privately owned riparian land along the Stanislaus River downstream from Knights Ferry Bridge to the San Joaquin River to be acquired in fee, and that approximately 7,230 acres of public domain and private land along the east side of the reservoir be acquired for use as a recreational and wildlife management area. This latter recommendation was changed in their reports. In a letter dated February 28, 1967, they indicated that the area most feasible for establishment of a wildlife unit is an area of 1,790 acres located in the Peoria Mountain area south of New Melones Reservoir site. In addition they recommend that lands acquired

for other project purposes be used for wildlife purposes. These lands were recommended for acquisition to mitigate the approximate 10,000 acres of wildlife habitat that would be lost with the construction of the project. The Bureau of Sport Fisheries and Wildlife in their report dated August 14, 1962, recommended that $25,000 be provided to the California Department of Fish and Game for habitat improvement on these lands. The foregoing recommendations were amended by letter from the Regional Director to the District Engineer dated July 30, 1964, to reflect the following requirements for fish and wildlife mitigation: (a) that downstream riparian habitat lands amounting to 2,130 acres of private land be acquired in fee; (b) that 5,800 acres of land adjacent to the reservoir be acquired, including withdrawal of 2,525 acres of public land; and (c) that project funds amounting to about $120,000 be allocated for wildlife habitat development on the 5,800 acres cited above, and project funds amounting to about $9,000 annually be provided for operation and maintenance of these lands.

State of California—Department of Public Works
Division of Water Resources
State Engineer

Application No. 14859 Filed June 16, 1952 at 11:01 A.M.

APPLICATION TO APPROPRIATE
UNAPPROPRIATED WATER

I, The Department of Finance of the State of California under and pursuant to the authority vested in it by Part 2, Division 6, of the Water Code of the State of California, does hereby make application for a permit to appropriate the following described unappropriated waters of the State of California, *SUBJECT TO VESTED RIGHTS:*

Source, Amount, Use and Location of Diversion Works

1. The source of the proposed appropriation is Stanislaus River located in Calaveras & Tuolumne Counties, tributary to San Joaquin River.

2. The amount of water which applicant desires to appropriate under this application is as follows:

(a) For diversion to be directly applied to beneficial use 8800 cubic feet per second, to be diverted from January 1 to December 31 of each year.

(b) For diversion to be stored and later applied to beneficial use 980,000 acre-feet per annum, to be collected between October 1 and July 1 of each season.

3. The use to which the water is to be applied is power purposes.

• • •

7. Storage Reservoir New Melones Reservoir.

DESCRIPTION OF PROPOSED USE

11. Place of Use. New Melones Powerhouse within Sections 10 & 11, T 1 N, R 13 E, MDB&M.

State of California, Department of Finance
[Signature of Applicant]

By James S. Dean
James S. Dean,
Director of Finance

This is to certify that the application of which the foregoing is a true and correct copy has been considered and is hereby approved SUBJECT TO VESTED RIGHTS and the following limitations and conditions:

1. The amount of water appropriated shall be limited to the amount which can be beneficially used, and shall not exceed .....

2. The maximum amount herein stated may be reduced in the license if investigation so warrants.

3. Actual construction work shall begin on or before ..... and shall thereafer be prosecuted with reasonable diligence, and if not so commenced and prosecuted this permit may be revoked.

4. Said construction work shall be completed on or before .....

5. Complete application of the water to the proposed use shall be made on or before .....

6. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Engineer until license is issued.

7. All rights and privileges under this permit including method of diversion, method of use and quantity of water diverted are subject to the continuing authority of the Department acting through the State Engineer in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value what-

soever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Witness my hand and the seal of the Department of Public Works of the State of California this day of 19

A. D. EDMONSTON,
State Engineer

DEFENDANTS' EXHIBIT 3(c)

State of California—State Water Rights Board
Application No. 19303 Filed March 11, 1960 at 4:58 P.M.

APPLICATION TO APPROPRIATE
UNAPPROPRIATED WATER

5-25-62 Amended Application Received

I, (SEE SUPPLEMENT) of ..... County of ..... State of ....., does hereby make application for a permit to appropriate the following described unappropriated waters of the State of California, *SUBJECT TO VESTED RIGHTS:*

Source, Amount, Use and Location of Diversion Works

1. The source of the proposed appropriation is Stanislaus River located in Calaveras and Tuolumne Counties tributary to San Joaquin River.

2. The amount of water which applicant desires to appropriate under this application is as follows:

(a) For diversion to be directly applied to beneficial use 6,000 (See Supplement) cubic feet per second, to be diverted from January 1 to December 31 of each year.

(b) For diversion to be stored and later applied to beneficial use 2,400,000 acre-feet per annum, to be collected between January 1 and December 31 of each season.

3. The use to which the water is to be applied is power purposes.

• • •

COMPLETION SCHEDULE

10. Construction work will begin on or before 1965. Construction work will be completed on or before 1970. The water will be completely applied to the proposed use on or before 1990.

DESCRIPTION OF PROPOSED USE

11. Place of Use. Water will be used in New Melones powerplant for the production of electrical energy for domestic, commercial and industrial use within the areas served by those systems interlocked with Central Valley Project.

Do(es) applicant(s) own the land whereon use of water will be made? No. Jointly? ..... Contracts will be negotiated with representatives of owners.

• • •

19. Does the applicant own the land at the proposed point of diversion? No. If not, give name and address of owner and state what steps have been taken to secure right of access thereto. Land will be obtained by purchase or condemnation pursuant to law.

20. What is the name of the post office most used by those living near the proposed point of diversion? Knights Ferry, California.

21. What are the names and addresses of claimants of water from the source of supply below the proposed point of diversion? Oakdale Irrigation District, South San Joaquin Irrigation District and others unknown.

SUPPLEMENT TO APPLICATION 19303

The United States of America, pursuant to the provisions of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, known as the Federal Reclamation laws, and acting for this purpose by H. P. Dugan, Regional Director, Bureau of Reclamation, Region 2, P.O. Box 2511, Sacramento 11, County of Sacramento, State of California, acting for this purpose by delegation of authority from the Secretary of the Interior through the Commissioner of the Bureau of Reclamation, pursuant to the Act of Congress of December 19, 1941, c. 595 (55 Stat. 842),

PARAGRAPH 2: AMOUNT OF WATER

A direct diversion of 6,000 c.f.s. will be made through the powerplant located at New Melones Dam.

The 2,400,000 acre-feet will be stored at rates equal to the flow of all presently unappropriated flows above New Malones. Any water temporarily stored and later released to provide flood control space will be in addition to the 2,400,000 acre-feet specified in the application.

This is to certify that the application of which the foregoing is a true and correct copy has been considered and approved by the State Water Rights Board SUBJECT TO VESTED RIGHTS and the following limitations and conditions:

1. The amount of water appropriated shall be limited to the amount which can be beneficially used, and shall not exceed .....

2. The maximum amount herein stated may be reduced in the license if investigation so warrants.

3. Actual construction work shall begin on or before ..... and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted this permit may be revoked.

4. Said construction work shall be completed on or before

5. Complete application of the water to the proposed use shall be made on or before

6. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Rights Board until license is issued.

7. All rights and privileges under this permit including method of diversion, method of use and quantity of water diverted are subject to the continuing authority of the State Water Rights Board in accordance with law and in the interest of the public welfare to prevent waste, unrea-

sonable use, unreasonable method of use or unreasonable method of diversion of said water.

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated:

STATE WATER RIGHTS BOARD

DEFENDANTS' EXHIBIT 3(d)

State of California—State Water Rights Board

Application No. 19304 Filed March 11, 1960 at 4:58 P.M.

APPLICATION TO APPROPRIATE UNAPPROPRIATED WATER

Amended Application Received 5-25-62

I, ...(SEE SUPPLEMENT)..... of ..... County of ..... State of ....., does hereby make application for a permit to appropriate the following described unappropriated waters of the State of California, *SUBJECT TO VESTED RIGHTS:*

Source, Amount, Use and Location of Diversion Works

1. The source of the proposed appropriation is Stanislaus River located in Calaveras and Tuolumne Counties, tributary to San Joaquin River.

2. The amount of water which applicant desires to appropriate under this application is as follows:

(a) For diversion to be directly applied to beneficial use 2250 (See Supplement) cubic feet per second, to be diverted from January 1 to December 31 of each year.

(b) For diversion to be stored and later applied to beneficial use 2,400,000 acre-feet per annum, to be collected between January 1 and December 31 of each season.

3. The use to which the water is to be applied is *irrigation, preservation and propagation of fish and wildlife, incidental domestic, recreational and water quality control.*

• • •

Completion Schedule

10. Construction work will begin on or before 1965. Construction work will be completed on or before 1970. The water will be completely applied to the proposed use on or before 1990.

Description of Proposed Use

11. Place of Use. Eastide San Joaquin Valley within the 3,000,000 acre gross *place of use shown on Drawings Nos. 214-208-4036, 4037, 4038 and 4039. Releases to the Delta will be rediverted for use in the Delta and on the Westside of the San Joaquin Valley as shown in these same drawings. Total area, approximately 7,500,000 acres included in the full area shown on maps receiving Stanislaus River water.*

Do(es) applicant(s) own the land whereon use of water will be made? *No.* Jointly?

Contracts will be negotiated with representatives of owners.

• • •

17. Other Uses. The nature of the use proposed is fishery protection and enhancement, and incidental, domestic and recreation. State basis of determination of amount needed. Fishery requirements in accordance with agreements with Fish and Game Commission. Incidental domestic needs will be supplied as development dictates.

• • •

19. Does the applicant own the land at the proposed point of diversion? No. If not, give name and address of owner and state what steps have been taken to secure right of access thereto. Land will be obtained by purchase or condemnation pursuant to law.

20. What is the name of the post office used by those living near the proposed point of diversion? Knights Ferry, California.

21. What are the names and addresses of claimants of water from the source of supply below the proposed point of diversion? Oakdale Irrigation District, South San Joaquin Irrigation District and others unknown.

• • •

SUPPLEMENT TO APPLICATION 19304

The United States of America, pursuant to the provisions of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, known as the Federal Reclamation laws, and acting for this purpose by H. P. Dugan, Regional Director, Bureau of Reclamation, Region 2, P. O. Box 2511, Sacramento 11, County of Sacramento, State of California, acting for this purpose by delegation of authority from the Secretary of the Interior through the Commissioner of the Bureau of Reclamation, pursuant to the Act of Congress of December 19, 1941, c. 595 (55 Stat. 842),

Paragraph 2. Amount of Water

The direct diversion of 2,250 c.f.s. applied for in this application can be a part of the direct diversion applied for in the power generation Application (19303).

Quantities of water temporarily stored and later released to provide flood control space will be in addition to the 2,400,000 acre-feet specified in this application.

Paragraph 3: Use

This water is for use within the area shown on the accompanying Drawing Nos. 214-208, 4036, 4037, 4038 and 4039. Upon completion of the proposed East Side Division, the

operation of New Melones Dam and Reservoir will be integrated with Ceneral Valley Project.

Paragraph 4: Point(s) of Diversion

New Melones Dam shall be considered as a point of diversion for all the stored water and part of the direct diversion applied for, although physical works may, at the discretion of the Bureau, be located on the bank of the reservoir.

Stored water released from New Melones Reservoir may be rediverted at the Knights Ferry Diversion Dam. Most of the direct diversion applied for will be diverted at Knights Ferry Diversion Dam, which will be located within the SW¼, NE¼ Section 21, T. 1 S., R. 12 E. Diversions and rediversions at Knights Ferry will be conveyed, as required, via the proposed Stanislaus-Montgomery Canal to Montgomery Reservoir for re-regulation and release to the East Side Canal. [1]

• • •

PARAGRAPH 13: IRRIGATION USE

The area to be irrigated is presently indeterminate. When operative, the project will supply supplemental water, and the expected flexibility of operation precludes an acreage estimate by crops. [2]

• • •

This is to certify that the application of which the foregoing is a true and correct copy has been cons 000 feet; materials by the State Water Rights Board SUBJECT TO VESTED RIGHTS and the following limitations and conditions.

1. The amount of water appropriated shall be limited to the amount which can be beneficially used, and shall not exceed .....

2. The maximum amount herein stated may be reduced in the license if investigation so warrants.

3. Actual construction work shall begin on or before ..... and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted this permit may be revoked.

4. Said construction work shall be completed on or before .....

5. Complete application of the water to the proposed use shall be made on or before .....

6. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Rights Board until license is issued.

7. All rights and privileges under this permit including method of diversion, method of use and quantity of water diverted are subject to the continuing authority of the State Water Rights Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this diversion (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated: STATE WATER RIGHTS BOARD

DEFENDANTS' EXHIBIT 4

UNITED STATES
DEPARTMENT OF THE INTERIOR

Bureau of Reclamation
Regional Office, Region 2
P. O. Box 15011
Sacramento, California 95813

JUN 21, 1967

California State Water Rights Board
1416 Ninth Street, Room 1140
Sacramento, California 95814

Gentlemen:

Subject: Applications 14858 and 14859 to appropriate water from the Stanislaus River

This is our petition for assignment of State Applications 14858 and 14859, which were filed in accordance with Part 2 of Division 6 of the California Water Code. The request for assignment of these applications is made for the use of Stanislaus River water in connection with the New Melones Unit of the Central Valley Project.

New Melones Reservoir was authorized by the Flood Control Act of 1944 (Public Law 534, December 22, 1944, 78th Congress, 2d Session), as modified by the Flood Control Act of 1962 (Public Law 874, October 23, 1962, 87th Congress, 2d Session). The authorization plan provides for, among other things, the construction of a dam on Stanislaus River about 35 miles northeast of Modesto, California, to create a reservoir with a gross storage capacity of about 2,400,000 acre-feet for flood control, irrigation, pow-

er, recreation, water quality, and fish and wildlife purposes. The plan also includes construction of a 150,000 KW capacity hydroelectric powerplant immediately below the dam. This unit of the Central Valley Project will furnish flood protection to about 35,000 acres of highly developed agricultural land in the flood plain of Stanislaus River and to suburban areas of Ripon, Oakdale, and Riverbank. It will make available a new irrigation supply for diversion to the local service areas and for export to the southern San Joaquin Valley, and will provide power and recreational opportunities for public use.

New Melones Dam and powerplant will be constructed by the Corps of Engineers and, upon completion, will become an integral part of the Central Valley Project and be operated and maintained by the Secretary of the Interior pursuant to the Federal Reclamation Laws.

Since the New Melones Unit is to become an integral part of the Central Valley Project, its construction will be in accordance with a general or coordinated plan for the development of water of the State of California and will meet all the requirements outlined under Section 10504.S, Part 2, Division 6, of the Water Code. The assignments would not, in our opinion, deprive the counties in which the water covered by the applications originates of any such water necessary for the development of the county. In order to assure such a reservation of water, the following provision has been included in the authorizing Act:

> "That before initiating any diversions of water from the Stanislaus River Basin in connection with the Central Valley Project, the Secretary of the Interior shall determine the quantity of water required to satisfy all existing and anticipated future needs within that basin and the diversions shall at all times be subordinate to the quantities so determined."

Applications 14858 and 14859 have not been completed in accordance with the regulations of your Board; therefore, there are enclosed, as required by Section 10504.01 of the Water Code, copies of proposed completed applications consistent with our requested assignments.

If there is any additional information you would need in connection with this petition, please let us know.

Sincerely yours,

C. H. Kadie
Acting Regional Director

Enclosures

DEFENDANTS' EXHIBIT 8

DEPARTMENT OF THE ARMY

Office of the Under Secretary
Washington, D.C. 20310
18 May, 1973

Honorable Russell E. Train
Chairman
Council on Environmental Quality
722 Jackson Place, N.W.
Washington, D.C. 20006

Dear Mr. Train (Russ):

I apologize for the delay in replying further, however I wanted to be sure we had carefully considered all aspects presented in your letter regarding the New Melones Project. The letter called attention to Decision 1422 of the California Water Resources Control Board, suggested that a supplemental environmental impact statement be prepared discussing the implications of that decision prior to any further action on the project, and further suggested that it might be appropriate to request postponement of the litigation now before the United States Court of Appeals for the Ninth Circuit on the issue of NEPA compliance. Based upon legal and technical advice on this matter, I am of the opinion that a supplemental impact statement is not required at this time, nor do I feel that postponement of the pending litigation is appropriate.

I am advised that the position of the United States, expressed by the Justice Department in its brief in the Court of Appeals, is that the environmental impact statement prepared for the New Melones Project is legally sufficient

without an explicit discussion of Decision 1422. That argument is based upon the legal premise that neither the construction nor operation of this Congressionally authorized project is subject to conditions imposed by State law, which are inconsistent with the clear directives of Congress.

I appreciate the concerns reflected in your letter that construction will proceed simply on the assumption that the conditions imposed by Decision 1422 will ultimately be held not to restrict the operation of the New Melones Reservoir. I cannot agree that construction of this project should be delayed, at great cost to the United States, pending resolution of a legal issue which is likely to take many years. This is not solely based on the conclusion that California lacks authority to prevent a project from being operated in accordance with Congressional mandate, but is also based on the view that Decision 1422, if held applicable, "might well impair full effectuation of the project purposes" is not grave enough to warrant further delay in the construction of this project. [1]

It is my understanding that the State Board's opinion does not purport to restrict the impoundment of water in the future on the basis of the situation presently existing. The decision merely preserves the board's jurisdiction to decide whether to permit the impoundment for specific purposes at the time such impoundment is scheduled. For example, the decision does not bar the impoundment of water for consumptive use; it merely requires that before any water is impounded, the Bureau show that the benefits of any specific use will outweigh the damage to fish, wildlife and recreation, and that it has a firm commitment to deliver the water. Likewise, I am advised that the decision does not bar the use of water from New Melones outside the four-county area, but merely requires as a condition precedent to

such use that the Bureau find that the need for such water could not be satisfied from another source. Since the dam will not be operational until 1980, it would be unwise to assess the economic feasibility of constructing the project on the assumption that the board will not exercise the authority it retains to permit needed impoundment at that time. The Corps, in calculating the expected benefits of the project, necessarily evaluated the long-term needs of the region. The board, in its decision, has manifested its awareness of the dynamic nature of these needs. On p. 27 of its opinion for instance, the board states that, while impoundment "should not be permitted *at this time,*" "there is a demonstrated need for the full yield of the project . . . at some time in the future" (emphasis added). At most, therefore, the result of this decision, even if upheld in court, would be to defer slightly the beneficial use of the full conservation yield of the project. Most of the project purposes are permitted by the decision. The decision does not render the project useless, nor does it fundamentally alter the value of the project.

Finally, I would like to respond more specifically to the suggestion that another supplemental impact statement prior to further construction would be an appropriate vehicle for discussing the effect of the State Board's decision on the operation of the project. My information indicates that the United States District Court held that the present statement fully complies with the requirements of the National Environmental Policy Act of 1969. Further, I am advised that the United States continues to advance that view, now before the Ninth Circuit Court of Appeals. Thus another impact statement now seems unneeded. As mentioned above, operation substantially congruent to that conditioned by Decision 1422 is discussed in the present impact

statement. Finally, the District Court has retained jurisdiction ". . . to insure that data dealing with the operation of the dam is forthcoming in a future or supplemental EIS, well before the New Melones Dam actually becomes operational." Such a statement would surely discuss the board's decision. To write an impact statement discussing that decision prior to construction of the main dam, on the other hand, would cause further delay, thereby substantially increasing construction costs (the parties stipulated in District Court that a six-month delay would increase construction costs by 12.6 million) and delay needed flood protection. The board's decision may ultimately be held to be without force insofar as it purports to regulate the operation of the dam, since by its own terms the decision merely retains the board's jurisdiction to regulate the operation of the dam after it is completed [2] and does not immutably restrict that operation. Based on the foregoing it does not seem appropriate that construction be delayed.

With highest regards, as always, I remain

Most sincerely,

/s/ Kenneth E. BeLieu
Under Secretary of the Army [3]

DEFENDANTS' EXHIBIT 11-3

Before the

STATE WATER RESOURCES CONTROL BOARD

STATE OF CALIFORNIA

In the Matter of Applications
14858, 14859, 19303 & 19304
to Appropriate from the
Stanislaus River

OPENING BRIEF OF THE UNITED STATES

United States Department of the Interior
Office of the Regional Solicitor
Sacramento Region
1800 Cottage Way
Sacramento, California 95825

January 31, 1973

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I.

INTRODUCTION

Before discussing what we deem to be the issues before the State Water Resources Control Board we shall mention the principal items which, though they consumed much time in the hearing, are not issues. These are Friant Dam and Reservoir and the feasibility of the New Melones Project. These matters have no relation to the issues before the Board, which are: whether there is unappropriated water to satisfy Applications 14858, 14859, 19303 and 19304, and whether State Applications 14858 and 14859 should be assigned to the United States. Subsidiary to these questions are those other matters listed in the staff summary:

> 2. Anticipated injury, if any, to the protestants and other lawful downstream users should the applications be approved with specific data substantiating such an injury.
>
> 3. What special terms and conditions, if any, should be included in the permits issued pursuant to the subject applications if approved.
>
> 4. Intent and ability of applicant to proceed with due diligence to construct the necessary works and to place water to beneficial use should the applications be approved.
>
> 5. Whether the project to be constructed under Applications 14858 and 14859 is for a purpose of development not in conflict with the general or coordinated plan for development of the waters of the State.
>
> 6. Whether the requested assignment of Applications 14858 and 14859 will deprive the counties of origin of any waters which may be required for their development.

> 7. Compatibility of the project with the Water Quality Control Plan (Interim), San Joaquin, Basin 5C.
>
> 8. Intent and ability of applicant to operate its project, if approved, so as not to further degrade the quality of water in that portion of the San Joaquin River affected downstream to Middle River.

We will first examine what has been established on these points, next consider the evidence of the protestants and finally comment on the legal issues involved.

II.

BUREAU'S EVIDENCE ON THE ISSUES

1

Existence of Unappropriated Water to Satisfy the Applications. The testimony of Gleason L. Renoud (R.T. pp. 37 through 59, 63 through 72) and Bureau Exhibits 10 through 27, 28A and 29 through 35 established the existence of unappropriated water. No contrary evidence was introduced.

2

Anticipated Injury to Protestants and Other Lawful Downstream Users. Agreement was reached with the principal users, Oakdale, and South San Joaquin Irrigation Districts. The agreement is in evidence as Bureau Exhibit 37. [2]

The Bureau will operate the project so as not to interfere with downstream rights and stands ready to enter into agreements with these users.

3

Special Terms and Conditions. So that the amount of water required for salmon can be determined the Bureau proposes the following condition:

In order to provide water for the Stanislaus River fishery and the other beneficial uses under Applications 14858 and 19304 and to determine the optimum releases from New Melones Reservoir needed for the protection and enhancement of the fishery resources the Bureau of Reclamation in cooperation with the Bureau of Sport Fisheries and Wildlife and the Department of Fish and Game shall conduct experimental studies relating to the anadromous fishery in the Stanislaus River and adjacent streams. Annual reports on the progress of these studies will be submitted and a proposed plan for the releases of water from New Melones Reservoir for the protection and enhancement of the Stanislaus River fishery shall be submitted to the Board not later than January 1, 1988.

4

Intent and Ability of Applicant to Proceed with Diligence to Construct the Necessary Works and Place the Water to Beneficial Use. [3] The Board is aware that only the existence of litigation prevents the immediate award of the contract for construction of the dam. The evidence of need in the local area was uncontradicted. During buildup of use in this area, beneficial use of this water will be made for fish and wildlife through co-operative studies with the Department of Fish and Game, by production of electrical energy and by uses out of the delta.

5

Whether the Project to be Constructed under Applications 14858 and 14859 is not in Conflict with the General and Co-ordinated Plan. The State of California has declared that the New Melones Project is in conformance with the California Water Plan. (Bureau Exhibit 2, p. xvi)

6

Whether the Requested Assignment of Applications 14858 and 14859 would Deprive the Counties of Origin of any Waters. The support of the Bureau by counties of origin at the hearing shows that they are convinced that the project will benefit them. The authorizing act provides that the Stanislaus River Basin gets first call on the water developed by New Melones to satisfy existing and anticipated future needs. (Bureau Exhibit 1, p. 1191)

7

Compatibility of the Project with the Water Quality Control Plan (Interim) San Joaquin Basin 5C. Bureau Witness John Rowell pointed out that Staff Exhibits 11, 12, and 13 [4] show that the New Melones Project is compatible with the Water Quality Control Plan (Interim) San Joaquin Basin 5C.

8

Intent and Ability of the Bureau to Operate the Project so as to not Further Degrade the Quality of Water in the San Joaquin River. The testimony of Bureau Witness John Rowell (R.T. p. 211-215), Staff Exhibits 11, 12, and 13 and Bureau Exhibit 36 demonstrate not only the intent and ability of the Bureau to operate the project so as to not further degrade the quality of water in the San Joaquin River, but further the intent and ability to improve it.

III

EVIDENCE OF THE DEPARTMENT OF FISH AND GAME

We cannot refrain from mentioning that the present position of the Department of Fish and Game differs from that transmitted to the Corps of Engineers (Bureau Exhibit 2 pp. 95-98) and which was before Congress when it authorized New Melones Dam and appropriated money for it.

The Department's present position would require practically the entire yield of New Melones for salmon.

Our first comment on the evidence presented by the Department is that Figure 1 which follows page 2-13 in Department Exhibit 2 and which shows a relationship between spring outflows in the Stanislaus and the number of female spawners 2½ years later, because it uses a logarithmic scale against an arithmetic scale, makes it difficult to see what [5] is happening. Plotting on two arithmetic scales would show rapidly decreasing returns for additional increments of outflow. Secondly, drawing a line between points does not establish a relationship where there is no "fit". In Figure 1 the points fluctuate greatly from the line.

Next, Table 1 on page 2-5 of Department Exhibit No. 2 uses the years 1947 through 1971 (except for 1950, when no count was made) to tabulate the spawning runs on the Stanislaus. Using these years, the Department arrives at an average present run of 8,600 fish. However, the Tri-Dam Project was completed in 1958. For the years since completion of the project we find a present average run of 5,900 fish. It is a fair question to ask if there is a relationship between the completion of Tri-Dam and the lower average run since that time. The answer is yes and the

relationship is shown by Bureau Exhibit 53 and the testimony of Dale Creasy (R.T. pp. 1339-1341). That the relationship exists is not surprising. Oakdale and South San Joaquin Districts will start the irrigation season with as much storage as possible. If the reservoirs are low the spring flows are stored. Moreover the magnitude of the flows at Ripon tells only part of the story. Comparison of Bureau Exhibits 12 and 14 show that when spring flows are low at Ripon they are almost non-existent above Orange Blossom Bridge, where, according to the testimony of the Department, most of the spawning occurs.

IV

EVIDENCE OF ENVIRONMENTAL DEFENSE FUND

Dr. Richard Norgaard's testimony was that the development of any [6] irrigation water at New Melones is bad for California agriculture. The farmer does not share Dr. Norgaard's philosophy. The farmer knows that each year he must pump water from a greater depth than the year before. We shall pass over the obvious difficulty of even short-term predictions of agricultural supply and demand. Dr. Norgaard's testimony indicates that he is under the impression that when a dam is closed all of the water is immediately applied to land. Apparently he is unaware of the necessity of building distribution systems and of the gradual build-up of use of a new supply of water. He speaks of three to five years and then adopts the year 1990 as the time of full development. To balance demand with the agricultural supply attributable to New Melones one must peer further into the future, a distince at which Dr. Norgaard admits even his vision fails. (R.T. p. 1098)

In any event, it is not the function of the Board to determine that agriculture shall cease or to end an existing economy.

Dr. Leo Eisel attempted to demonstrate by his testimony and in EDF Exhibit 10 that a 2,400,000 acre-foot capacity reservoir would furnish little more of the Department of Fish and Games requested releases than would a 560,000 acre-foot reservoir. There are two major errors in the demonstration.

First—Dr. Eisel used for stream flow data Bureau Exhibit 28A. This exhibit is intended to show the amount of unappropriated water available [7] after all prior rights, whether developed or not, are satisfied. The ultimate development of these prior rights will occur far in the future and it is certain that some of them never will be developed. Much of the water that would satisfy these rights is available for the New Melones Project during the useful life of the project.

Secondly—Dr. Eisel did not utilize the advantage provided by the enlarged reservoir to provide the optimum firm yield. On streams such as the Stanislaus with flows fluctuating greatly from year to year, a large reservoir with carry-over storage is necessary. To determine the yield during a dry cycle the reservoir must be considered full going into that cycle. The streamflows shown on USBR Exhibit 27 show that a 2,400,000 acre-foot reservoir would have a full conservation pool at the beginning of Dr. Eisel's operation study, 1922.

To make a meaningful examination of the yield of the different sized reservoirs a study should have commenced with a full conservation pool for each of the reservoirs.

Although no evidence was submitted on the point, EDF attempted to minimize the power production of New

Melones by showing that it is only a small percentage of the power produced in California. With the foreboding energy crisis in the nation and in California no increment of power production should be discounted, particularly power produced so cleanly. Moreover, New Melones power is peaking power. The water rests in New Melones Reservoir ready to release its potential energy upon call. This peaking [8] power supports a much larger quantity of energy by supplying the increments required for the total useable quantity.

V

JURISDICTION OF THE BOARD

There can be no argument with two propositions: First, under Article IV of the United States Constitution, the Supremacy Clause, conflicting state law must yield to federal law. Secondly, any authority the Board possesses over the Bureau of Reclamation must originate in Section 8 of the Reclamation Act of 1902.

> "Sec. 8. [Irrigation laws of States and Territories not affected—Interstate streams—Water rights.]—Nothing in this act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder, and the Secretary of the Interior, in carrying out the provisions of this act, shall proceed in conformity with such laws, and nothing herein shall in any way affect any right of any State or of the Federal Government or of any landowner, appropriator, or user of water in, to, or from any interstate stream or the waters thereof: Provided, That the right to the use of water acquired under the provisions of this act

shall be appurtenant to the land irrigated and beneficial use shall be the basis, the measure, and the limit of the right. (32 Stat. 390; 43 U.S.C. §§ 372,383)"

The operation of Section 8 has been determined by the Supreme Court:

"As we read § 8, it merely requires the United States to comply with state law when, in the construction and operation of a reclamation project, it becomes necessary for it to acquire water rights or vested interests therein. But the acquisition of water rights must not be confused with the operation of a federal project. As the Court said in *Nebraska v. Wyoming, supra,* at 615: 'We do not suggest that where Congress has provided a system of regulation for federal projects it must give way before an inconsistent state system.'" (Ivanhoe Irrig. Dist. v. McCracken, 357 U.S. 275, 291 (1958)) [9]

Whether the Board has authority under Section 8 to alter a federal project from what Congress authorized has been decided:

"We must agree with the government that 'reason precludes an interpretation of the general provisions of Section 8 of the Reclamation Act [of 1902] and Sections 1 and 8 of the Flood Control Act [of 1947] which would impute to Congress an intention to frustrate its plans for this project by subjecting it to the risk that it might never be used for some of the authorized purposes, should a state permit not be forthcoming.'" (Turner v. Kings River Conservation District, 360 Fed. 2d 184, 198 (1966))

Under the law as declared by the courts the Board's function becomes ministerial. It must determine whether unappropriated water exists. A permit for the unappropriated water then follows as a matter of course.

Nor does state law give the Board any wider authority. The procedure for authorization of a federal project includes a report to Congress with comments on the report by the appropriate state agency. (In the case of New Melones this is Bureau Exhibit 2) Congress has before it the official position of the state when it considers the project. It may, if it wishes, modify the project on the basis of the state's comments, but nowhere is there any provision for the state to overrule Congress or to substitute its wisdom for that of Congress. Even this limited role of the State does not belong to the Board. Sections 450 through 453 of the Water Code puts in statutory form what was the practice before the enactment of these sections: the Governor or such state official or agency as he may designate provides the comments. The Board has never been designated by the Governor to perform this function. [10]

The evidence introduced by Environmental Defense Fund went to three points: the inundation of the whitewater area, the advisability of irrigating land and the advisability of building a reservoir of 2,400,000 acre-foot capacity. None of these matters fall within the jurisdiction of the board. No argument should be required on these points, however, we will remark that inundation of the whitewater area insofar as it affects the navigability of the Stanislaus River (or of the San Joaquin) is completely within the discretion of Congress. The authorizing act states:

"Sec. 203. The following works of improvement for the benefit of navigation and the control of destructive floodwaters and other purposes are hereby adopted and authorized .... The New Melones Project, Stanislaus River, California, authorized by the Flood Control Act approved December 22, 1944 (58 Stat. 887) is hereby modified substantially in accordance with the recommendations of the Chief of Engineers in House

Document Numbered 453, Eight-Seventh Congress . . ."
(Bureau Exhibit 1, pp. 1180 and 1191)

Moreover there is no interference with water rights or any rights cognizable by the Board upstream from New Melones Dam.

VI

CONCLUSION

It is submitted that on the actual issues before the Board the evidence of the Bureau was convincing and uncontroverted, that the evidence of the Protestants was for the most part speculation based on faulty assumptions and that Applications 14858 and 14859 should be assigned to the [11] Bureau and Permits should be issued on these two applications and on Applications 19303 and 19304.

Respectfully submitted, this 31st day of January, 1973.

CHARLES R. RENDA
Regional Solicitor
Sacramento Region
U. S. Department of the Interior

By JOHN L. RICE
John L. Rice
Attorney [12]

DEFENDANTS' EXHIBIT 11-11

Before the
STATE WATER RESOURCES CONTROL BOARD
STATE OF CALIFORNIA

In the Matter of Applications
14858, 14859, 19303 & 19304
to Appropriate from the
Stanislaus River

REPLY BRIEF OF THE UNITED STATES

United States Department of the Interior
Office of the Regional Solicitor
Sacramento Region
2800 Cottage Way
Sacramento, California 95825

February 15, 1973

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	Table 1 (following page 10)	

I INTRODUCTION

The Protestants and Interested Parties filing opening briefs can be placed into two groups. The first group is composed of those who do not oppose the construction of the New Melones Project and includes:

McMullin Reclamation District No. 2075 and the others filing a joint brief with the District.

Stanislaus River Flood Control Association and Stockton-East Water District (who filed a joint brief).

San Joaquin County Flood Control and Water Conservation District.

Banta Carbona Irrigation District.

Delta Water Association and Delta Water Users Association (who filed a joint brief).

Department of Fish and Game.

We shall consider together the briefs of all of these protestants except for the Department of Fish and Game, which we will discuss separately.

A second group is opposed to the construction of the New Melones Project and includes:

Contra Costa County Water Agency, *et al.*
Sierra Club.
Environmental Defense Fund.

We fail to discern anything in the brief of the Contra Costa County Water Agency that touches upon the issues before the Board and we will [1] not respond to it. We will separately discuss the briefs of the Sierra Club and the Environmental Defense Fund.

II THOSE NOT OPPOSED TO THE NEW MELONES PROJECT

A. *Point of Rediversion*

Several of this group object to the Knights Ferry point of rediversion. Unless the East Side Canal is constructed there will, or course, be no rediversion at Knights Ferry. If East Side becomes a reality, this point of rediversion would add flexibility to the operation of New Melones and East Side through the option of supplying part of the New Melones service area or the East Side service area from either source. The result would be a more efficient operation and a saving of water.

B. *Use Limited to the Counties of Calaveras, Tuolumne, Stanislaus and San Joaquin.*

Several of this group would restrict the use to the four counties. Applications 14858 and 14859 are state filings and subject to the county of origin provision. The four counties can be protected in the assignments. The authorizing act (USBR Exhibit 1) contains a similar provision for the Stanislaus River Basin. The Secretary of the Interior, well before the dam is completed, will determine the quantity of water necessary to supply the future needs of the basin. Much study, of course, must be made in cooperation with the counties, aimed at refining their estimates of need, at determining what physically can be done and [2] determining which areas can be better supplied from another source. During the build-up of the four counties uses the Bureau should be free to put the water to beneficial use elsewhere.

C. *Water Quality Standards.*

Many of this group urge that the Board impose the water quality standards asked by the Delta Water Agency. The water quality to be maintained in the Southern Delta under

the Bureau's Memorandum of Agreement with the State Regional Water Quality Control Board (Staff Exhibit 13) is that adopted by the State Board in its Resolution 68-17. This quality is better than that which now exists (USBR Exhibit 43). Congress gave to the Secretary of the Army the option of including storage space for water quality control and did not give to the Board the authority to override the Secretary's decision.

III DEPARTMENT OF FISH AND GAME

The question before the Board is whether there is unappropriated water to satisfy the New Melones applications. The only argument that the Department might properly make is that some of the flows in the Stanislaus should occur as they now do to preserve the present fishery. However, Fish and Game is asking for enhancement. After discussing present fishery problems the Department on page 5 of its brief states:

> "The water of San Joaquin drainage origin should be provided by the New Melones Project to correct these problems." [3]

This would all be very well if Congress had authorized the project to correct all present fishery problems or had given the Department or the Board the power to so modify the project. However, Congress did not do so.

That the flows requested by the Department are greatly in excess of those that occur now during what the Department says are the critical months and provide a great enhancement of the fishery is obvious from Table 1. This table is compiled from Staff Exhibits 3 and 4. During the five years examined, from 181,000 to 272,000 acre feet annually must be released from New Melones to increase the historical flows to those requested by the Department.

It need not be pointed out that, although the United States plans such acquisition, the Board cannot order the United States to acquire gravels of wildlife habitat.

We iterate that the Bureau is willing to work with the Department, within the total requirements of the project, to achieve the Department's goals.

IV ENVIRONMENTAL DEFENSE FUND

The Environmental Defense Fund makes several statements which we believe are not supported by the record. The propositions urged by EDF are:

A. *The Bureau has no present plan for application of the water to a beneficial use within a reasonable time.* [4]

The Bureau has many plans and testified to them. It has no final plan and will not have until the supply for the local area is determined and it is determined what area has the most urgent need for the remaining or interim yield. It must be remembered that the dam will not be completed until five years after construction of the dam begins.

Speaking of the San Felipe Division, EDF states that wastewater recycling and groundwater recharge appear to be a feasible alternative to importation of CVP water. Groundwater recharge is part of the Bureau's plans for San Felipe. As for wastewater recycling, since the transcript citation given by EDF does not touch upon the subject we cannot determine upon what evidence EDF relies. Certainly there is no evidence in the record of any determination that wastewater recycling is economically feasible or that public health requirements would not place impossible conditions upon recycling.

Speaking of the Delta-Mendota service area, EDF says it is not known whether the application of the 160 acre

limitation would be acceptable. The limitation has always been acceptable in an area needing water.

As for the West Plains section of Westlands Water District, water is required from somewhere. It is true that New Melones water will be mixed with other water in the Delta before going to Westlands but it is still a place of use for New Melones water. The point is that before long total supply will not meet the demand. [5]

As suggested by EDF there is no present final plan for a cross valley connector. Not everything can be done simultaneously and the cross valley connector would be of little use without a water supply.

B. *The Bureau is at the present time and will be for the foreseeable future up to its ears in uncommitted, uncontracted water.*

Alas, this is not true. Revised USBR Exhibit 46 shows that of the CVP yield of 9,250,000 acre-feet over 70 percent is now under contract. USBR Exhibit 39 shows that the entire CVP yield is committed. The requirements of Decision 1379 would reduce the CVP yield by 2.2 million acre-feet annually (USBR Exhibit 48); without New Melones, the commitments would only be met until 1978 (USBR Exhibit 46). If the Environmental Protection Agency adopts the requirements of Decision 1379 we may be in a water crisis. We say "may" because it must then be determined whether Congress intended to override the provisions of the acts under which the CVP was built. It would be comforting, of course, to have Congress make the determination by subsequent legislation.

C. *There has been no showing that the water will be put to beneficial uses.*

The water will be put to use in one of the areas under study. Which area will depend upon the urgency at the

time the supply is developed, whether it is an interim supply and other considerations. Whichever area it will be, the use satisfies the definition of beneficial use contained in the Water Code.

D. *The water will not be put to beneficial use within a reasonable period of time.* [6]

It is impossible not to put the water to beneficial use. If it is not used in the local area the winter and spring flows will be released into the Delta at times when it will be made use of.

E. *The Bureau has not shown that it will put the water to a use not in conflict with a general or co-ordinated plan.*

The State of California in its comments on the New Melones Report (USBR Exhibit 2) thinks otherwise.

F. *The usefulness of the water quality releases is not known.*

The quotation of the Bureau witness John Rowell relied upon by EDF to make this point is taken out of context. The witness has just finished discussing the effect of the water quality and fishery releases and was discussing what further effect the conservation yield would have. This further effect, of course, cannot be predicted until its place of use, quantities and timing are determined.

EDF fears that leaching of salts will degrade the San Joaquin River. The problem is independent of New Melones

and will be exacerbated by leaching with groundwater of lower quality than that of the Stanislaus River.

G. *The testimony of EDF witnesses is unrebutted.*

EDF refers to the unrebutted testimony of Dr. Norgaard and Dr. Eisel. Dr. Norgaard himself limited his testimony to events up to the year 1990. Nor does one need to be a hydrologist or computer scientist to realize that if one starts both resorvoirs with a small pool and runs a study through a period when a small resorvoir can control the inflow, a small [7] reservoir performs as well as a large one. This is reason for a large reservoir—to conserve the water of the wet year.

V SIERRA CLUB

Sierra Club urges several propositions:

A. *Water should not be delivered to areas experiencing subsidence because of groundwater pumping.*

How this would ameliorate the problem we do not see. Substituting a surface supply for the pumped supply would permit natural recharge and prevent the additional loss of underground storage space.

B. *Wastewater reclamation can supply the needs of the service area of the San Felipe Division at a lesser cost to the nation and to the Water District.*

The study mentioned, of course, is not in evidence. Our understanding of the study is that it concludes only that wastewater reclamation merits further study.

C. *The fact that the Bureau has proposed the Suisun Marsh area as one for use of New Melones water leads Sierra Club to question whether the Bureau has a real interest in reasonable water resources management and water conservation.*

We cannot find such a proposal in the transcript. However, it is a good idea and by an exchange of water can be accomplished.

VI SOME GENERAL REMARKS

We trust we will be indulged in a few general remarks though they stray from the issues before the Board.

Some parties imply that Bureau officials are advancing a questionable project against the interests of the State of California. It is, [8] of course, impossible for a project to be authorized by Congress unless responsible agencies of the state advocate it. Even then authorization only results from the strenuous efforts of California's representatives in Congress. The thing is that these parties arrogate to themselves the decision of what is in the interests and what is against the interests of the people of California.

California is the leading agricultural state in the nation. It did not reach this position by refusing to modify the regimen of nature. Anyone who travels the Central Valley cannot avoid seeing the benefits of the Central Valley Project. We do not think that this is bad. However, though all looks prosperous, in some instances we are living on our capital. We are mining our groundwater. Unless we introduce a surface supply so that groundwater use and recharge are in balance these areas will go out of production and the economic repercussions will extend beyond

the area itself. Most of the proposed uses of New Melones will replace or supplement groundwater pumping.

Several parties make oblique references to Friant Dam in a way that implies that Friant is an evil thing. Those who use water from Friant would not agree, but in any event the quarrel is not with the Bureau but with the legislature, for Friant is operated just as Section 11226 of the Water Code says it should be. [9]

Respectfully submitted, this 15th day of February, 1973.

CHARLES R. RENDA
Regional Solicitor
Sacramento Region
U. S. Department of the Interior

By JOHN L. RICE

John L. Rice
Attorney [10]

TABLE 1

NEW MELONES STORAGE RELEASES REQUIRED TO MEET DEPARTMENT OF FISH AND GAME'S REQUESTED MINIMUM FLOWS IN STANISLAUS RIVER BELOW GOODWIN DAM

			Flows—Stanislaus River Below Goodwin Dam (all quantities in acre-feet)									
	Fish & Game's requested minimum flows below Goodwin Dam		Water Year 1959-60		Water Year 1960-61		Water Year 1963-64		Water Year 1965-66		Water Year 1967-68	
Month	c.f.s.	Ac. Ft.	Historical flow	Storage releases required	Historical flow	Storage releases required	Historical flow	Storage releases required	Historical flow	Storage releases required	Historical flow	Storage releases required
Oct.	200	12,298	684	11,614	1,410	10,888	12,900	0	10,840	1,458	6,670	5,628
Nov.	200	11,901	1,520	10,381	3,410	8,491	8,690	3,211	40,530	0	32,480	0
Dec.	200	12,298	1,890	10,408	4,470	7,828	26,870	0	80,610	0	47,360	0
Jan.	150	9,223	1,020	8,203	4,190	5,033	46,650	0	80,510	0	29,630	0
Feb.	150	8,331	126	8,502	2,260	6,071	14,870	0	51,950	0	7,540	1,088
March	700	35,725	291	35,434	671	35,054	3,460	32,265	5,980	29,745	20,880	14,845
April	900	44,450	368	44,082	356	44,094	1,360	43,090	915	43,535	12,840	31,610
May	1,200	61,242	1,060	60,182	93	61,149	156	61,086	400	60,842	257	60,985
June	1,000	49,389	193	49,196	80	49,309	142	49,247	224	49,165	150	49,239
July	100	6,149	98	6,051	108	6,041	139	6,010	189	5,960	155	5,994
Aug.	100	6,149	67	6,082	100	6,049	148	6,001	170	5,979	189	5,960
Sept.	100	5,950	30	5,920	178	5,772	101	5,849	110	5,840	122	5,828
TOTAL:	—	263,105	7,347	256,055	17,326	245,779	115,486	206,759	272,428	202,524	158,273	181,177

DEFENDANTS' EXHIBIT 13

United States
Department of the Interior

• • • • • • • • • • news release

FOR RELEASE TO P.M.'S FRIDAY,
OCTOBER 10, 1975

75-45-40

Reclamation in California:
Purpose-Practice-Propriety-Potential
Remarks by Gilbert G. Stamm
Commissioner of Reclamation,
U.S. Department of the Interior

to

California Water Resources Association
San Francisco, California, October 10, 1975

• • •

The largest single system among those that have been constructed over the last several decades is the Federal Central Valley Project. Thanks mainly to CVP, major rivers have been tamed, ground-water levels have been stabilized, major flooding has been prevented, and 6 million acre-feet of water is delivered yearly to farmlands and cities hundreds of miles distant from water supply sources.

The Federal control structures on San Joaquin Valley streams, combined with the facilities to control water in northern California and deliver it to the San Joaquin Valley, now provide much of the water that is used to irrigate some of the richest farmland in the world. The most recent

list of the 10 leading counties in the United States in farm productivity include five served by the Central Valley Project: Fresno County, number one in the nation; Tulare County, number two; Kern County, number three; San Joaquin County, number six; and Stanislaus County, number 10.

The project delivers water to 75 water districts ranging in size from the Westlands Water District of about 600,000 acres down to the Swinford Tract Water District of about 190 acres. It also serves directly about 130 individual water contractors, principally in the Sacramento Valley. We estimate there are some 12,500 small-farm families in the 1.8 million-acre San Joaquin Valley portion of the Central Valley Project. These family farmers directly benefit from the supply of Reclamation water. In addition, of course, water is supplied to numbers of farm enterprises where several parcels of individually-owned land are farmed as a single unit, and to some large corporate farms—all legally within the acreage limitations of Reclamation law.

During 1974, an ideal combination of weather and water supply conditions throughout the planting, growing, and harvesting months produced a favorable harvest season. Some 14 million tons of food and fiber valued at $1.8 billion were produced on 2.7 million acres of land in central and northern California and southern Oregon, the direct result of CVP and other smaller reclamation projects in the area.

Currently, our construction program in California is proceeding at a rapid rate. We are looking forward to completing about $1.25 billion of authorized new water conservation and conveyance facilities during the next 10 years. Meeting this schedule, of course, will depend heavily on Federal budgetary considerations and support from California for adequate funding levels. The principal developments now under construction are the Auburn Dam, the Westlands Water District distribution system, the San Luis Drain, and the Tehama-Colusa Canal, all in the Central Valley Project. We are also looking toward an early start on the San Felipe Division to supply water to the Santa Clara-Monterey-San Benito Counties area. Although not yet authorized, the Mid-Valley and Peripheral Canals could well be started during the next 10 years.

So much for the facts and figures. By themselves, they are most impressive, and on the surface indicate that all is going well in California.

But you know and I know that not all is going well. Californians today are involved in various types and degrees of controversy concerning water resource development, management, and operation policies comparable to the Central Valley Project authorization issues in the 1930's and the State Water Project authorization controversy in the 1950's and early 1960's. [2]

While differences of opinion exist between the Bureau of Reclamation and the State of California concerning the authority and latitude each has in carrying out its responsibilities and obligations in water resource operation and management, I do not see those differences as being the root cause of the controversy in California today.

The root causes, I believe, are differences of opinion between various groups of Californians with special or competing interest. The old North-South division still exists, but in addition you have the developers vs. preservationists, the water-haves and the water-have-nots, the divergent Delta interests, those concerned with long-range needs and those more concerned with the immediate future, who should call the signals and who should pay the bill.

You have those who advocate making more water available to produce food . . . to produce power . . . to meet the needs of homes and factories . . . to increase recreational opportunities . . . to expand the State's economic base . . . to expand social and cultural opportunities . . . to protect and enhance the environment . . . to build . . . to stop building . . . to dilute pollution . . . to repel salt water intrusion. Special interest groups in California are numerous, vociferous, and influential. And their causes are not without merit.

But their objectives are often conflicting and they tend to shift their support among the agencies whose policies best fit their own particular objectives.

There is little unanimity among the divergent interests; they are together on only a few issues, fragmented on most.

I don't mean to condemn them for this. Special interest groups have a right and an obligation to make their positions clear and to argue their own causes. But until such differences of opinion between divergent interests are resolved, neither we—nor the Department of Water Resources —nor the Water Resources Control Board can state with certainty that we are responding to the wishes of the people of California.

Before I finish these remarks, I plan to suggest a way to define more clearly the wishes of the people of California, but first I would like to discuss the differences which *do* exist between the Bureau of Reclamation and State agencies in California.

From the point of view of the Bureau of Reclamation, the basic difference stems from efforts within the State which appear to have the objective of dictating policies and regulations which would affect the daily operation of Federal

facilities and which would run counter to the authorized functions and obligations of Federal projects.

In stating that viewpoint, I do not mean to imply that we think the Federal Government should infringe upon the long-standing right of the State to allocate its water entitlements. [3]

We recognize that the ultimate right to store, divert, and utilize water in accordance with applications made pursuant to State law is one of the key elements of past, present, and future development in the West. Each state has the duty to determine under its own statutes how its unappropriated water is to be used.

Since 1902, the Bureau has consistently taken the position that it will obtain under State law its rights to store and divert water for its projects recommended for Congressional authorization. In fact, water right filings should be made for necessary water rights prior to the conduct of detailed studies, and in most cases this has been done. But certainly the water supply for a given project must be tied down prior to Congressional authorization. It would be foolish to do otherwise. Much time and money could be lost by interim filings.

However, we do maintain the position that once we have filed for water rights pursuant to State law and, through appropriate subsequent proceedings, which vary among States, have obtained the right to use designated blocs of water for designated purposes, the States cannot unilaterally dictate daily operations of the Federal facilities nor unilaterally dictate future changes in authorized uses. Nor could the Bureau adopt changes which would contravene statutory intent or obligation. This prerogative is reserved to the Congress of the United States.

On the other hand, it must be remembered that the Congress can modify and amend the laws under which we oper-

ate, when agreement can be reached on the justification therefore. Within statutory limitations, we frequently have considerable operational flexibility. We exercise that flexibility to the fullest to maximize the total benefits that can be derived, so long as, in so doing, we do not not jeopardize the authorized project functions. Flexibility can be expanded through judicious, coordinated system operation of facilities in a river basin, and can be further expanded by close coordination with others who own and operate water control facilities in the same basin. We strongly advocate this course.

We have historically operated Federal facilities in that manner including those of the Central Valley Project. Throughout the West, we maintain recreational pools in many reservoirs for use in the summer at levels as high as possible without jeopardizing other authorized functions such as flood control, irrigation, and power requirements. We maintain flood control space in reservoirs which were not authorized for flood control purposes, so long as we do not jeopardize the authorized water supply functions. We have on many occasions released huge volumes of water to repel salinity in the Delta, beyond any contract obligation, when such water was available. We have released water for fish and wildlife purposes and to maintain esthetically pleasing streamflows when water was available for such worthwhile objectives.

We have used our operational flexibility, usually in full coordination with operations by others, to maximize benefits and will continue this [4] policy—so long as the authorized functions of the Central Valley Project are not jeopardized. Beyond that, we cannot go without new or amendatory authorization from the Congress.

* * *[5]

I'd like to get back to what I see as the overriding problem in California—the conflict of competing groups and interests for control of California's existing and projected water resources—and what can be done about it.

The current planning program of the Bureau of Reclamation is being conducted in an atmosphere of total public involvement. Our objective is the general acceptance of a plan that does the most good for the most people both now and in the future.

Public involvement in the planning process brings special interest groups into the picture and provides an opportunity for objective consideration of all points of view. The careful weighing of special interest group proposals is part of the process of seeking common ground for reconciliation of differences.

Individuals come and go; issues come and go; political platforms come and go. People, I believe, are here to stay. Special interest groups include exploiters at one extreme and total preservationists at the other. Neither extreme can be condoned. Between these extremes are numerous well-meaning groups whose desires or demands must be blended with those of others.

Development has been basic to the economic growth and well-being of this State and this Nation, and to the society it supports. Wise development of resources is still basic to the continued growth of and well-being of California, the Nation and the world, but we must recognize that the world may go on for many generations and that our resources must be used wisely, to give assurance that our renewable resources of land and water will remain available for man's benefit in perpetuity.

In California, we have a Federal water program largely, but not totally, embodied in the Central Valley Project.

The State of California also has a water program, probably the greatest and most comprehensive of any State in the United States.

The Federal Central Valley Project and the California State Project have much in common and must be planned, developed, and operated in very close cooperation in order to maximize benefits of the two massive undertakings, or conversely, to avoid inefficiencies and loss of potential benefits. Differences in State authorities and obligations as compared to [6] Federal authorities and obligations must be taken into account. The common good must be given prime consideration. The contractual obligations of both must be taken into account, and, as far as either or both have flexibility for operation, the priority of objectives or project functions must be taken into account.

As mentioned previously, special interests are numerous, vociferous, and influential. One group may propose Federal legislation to its benefit while its close next-door neighbor may strongly oppose the very same piece of proposed legislation.

Because such differences exist, someone must assume the leadership in finding common ground between the philosophies and program advocacies of Southern California, the divergent Delta groups, the Sacramento Valley needs, the San Joaquin Valley needs on the east side, and on the west side, the Contra Costa County desires, and other competing needs.

How are we to reconcile differences of opinion as to what constitutes the wisest use of California's water resources? Who should attempt to reconcile those differences?

Since the Central Valley Project is an intra-State basin rather than inter-State, I suggest that the State of California officially assume the leadership in attempting to bring all interests together.

I want to assure you, however, that the Bureau of Reclamation is by no means passing the buck when I make that suggestion. We stand ready to cooperate with the State in public involvement meetings, in technical studies, in technical analyses, and in any other way in which we can be helpful in searching for common ground. Our only limitation may be funds and personnel. The Congress controls the funds, and OMB controls the personnel ceiling. Today we have 1,300 fewer people than we had 6 years ago, and 10,000 fewer than we had some 20 years ago, to perform a program that is greater by far than any in our history.

During the past two years, Reclamation has been conducting a Central Valley Project Total Water Management Study. That study is unique, not only because of its emphasis on water management rather than water development, but also the open public participation which is being encouraged.

Nearly 50 public meetings already have been held in connection with the study to obtain public views on needs and desires related to water management in the Central Valley. A recent series of meetings had as its principal purpose obtaining public views on specific water management proposals related to water supply and water marketing.

A significant part of the study effort will be dedicated to reanalyzing the Federal Central Valley Project. This reanalysis will consider how the project operation, authorizations, or structures can be modified so that the [7] Project can better meet today's needs. This type of reanalysis is needed because environmental, social, and energy con-

siderations are even more important today than they were when most of the project was authorized and constructed. Also, with 25 percent of California's water resources barred from development due to Wild River status of several northern rivers, with continuing overdraft of many groundwater basins, and with increasing drainage problems in many of the farmland areas, future water demands will surely tax all available experience and ingenuity.

We understand that the California Department of Water Resources is about to undertake a reformulation of the California Water Plan through a similar program.

I hope that we will be able to coordinate these two studies so that when they are completed, we will come up with, not a plan for the Central Valley Project and a plan for the State Water Project, but a new California Water Plan which will meet the needs of the vast majority of the people of California for generations to come.

The Federal and State objectives are similar, or ought to be, and we in Reclamation are willing to lend our support to mutual cooperation with the State in this effort.

The thrust of our joint effort should be toward maximizing benefits and minimizing detriments. If should focus on total water management, both in planning and in implementation, to maximize efficiency in water use so as to serve better the needs of people.

One prime example of better total water management is the Peripheral Canal which is, so far as I know, the most efficient means yet proposed for controlling water quality in the Delta. It could save, I understand, about a million acre-feet of water a year as compared to other methods of meeting similar water quality objectives in lean water years.

State and Federal technicians working together ought to be able to team up on studies to verify the amount of water that would be saved by the Peripheral Canal, and if such savings can be confirmed, I see no reason why all concerned should not lend their support to a joint Federal-State Peripheral Canal.

In order to arrive at a plan which will provide the greatest benefits for the largest majority of Californians, we must establish in our planning program an atmosphere of mutual trust and confidence not only between the Bureau of Reclamation and State agencies, but also between and among the representatives of the various interest groups involved.

Once that atmosphere has been established, we must lay all of our cards on the table, face up; all pros and cons must be exposed and explored. [8]

No surprises. No ulterior nor devious motives.

Once the proper atmosphere has been established and objectivity assured, we can clearly define and understand the differing positions . . . the reasons for those differences . . . and only then begin to draft solutions which undoubtedly will require much give and take.

We cannot expect only the special interest groups to participate in the giving and taking; representatives of the State and Federal governments also must be willing to do some giving as well as taking.

It is true that the State Water Resources Control Board and the Department of Water Resources operate under certain legislative limitations and obligations. The Bureau of Reclamation likewise has certain statutory limitations and obligations. But both we and the State agencies also have a certain amount of flexibility which we should be

willing to exercise to the fullest for the benefit of the people of California.

It is possible that through our joint efforts a new California Water Plan might be proposed which would require greater flexibility on the part of the Bureau—or the State—than is presently possible under existing legislation.

If such a plan were to receive unanimous or near-unanimous support from all of the interest groups involved, I see no reason why the legal impediments could not be removed.

I cannot speak for the State of California but I can assure you that, if our joint efforts reveal that amendatory legislation for the Federal program is necessary and justified and has strong general support from the affected State interests and beneficiaries, the Bureau of Reclamation will support such legislation.

I am not concerned nor fearful of our ability to obtain amendatory Federal legislation if the need is clearly defined, the justification is positive, and the support is strong.

But I would be less than honest if I did not tell you bluntly that, based on my own evaluation and longtime experience, if the conflicts now existing in California cannot be resolved, not only will amendatory Federal legislation not be forthcoming, but the support we now have for water resource development in California may well dry up. I cannot believe that is what the people of California want.

But unless the State of California takes the lead in determining the wishes of its citizens regarding future water resource development, management, and operation policies in the Central Valley, and elsewhere in the State, how are any of us to know for sure what the people of California *do* want? [9]

DEFENDANTS' EXHIBIT 16

[Received in evidence pursuant to order of U. S. Court of Appeals for Ninth Circuit, dated April 1, 1977, granting California's motion to augment the record on appeal]

State of Nevada
County of Humboldt. } ss.

I, GLADYS AUL, County Recorder in and for the County of Humboldt, State of Nevada, do hereby certify that:

The attached is a full, true and correct copy of an instrument in writing as the same appears of record in the Silver State, April 4, 1902 at Page ..... Book ..... of newspaper records of Humboldt County, Nevada.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my Official Seal this 21st day of December, A.D., 1976.

/s/ Gladys Aul
County Recorder in and for the
County of Humboldt, State of Nevada

[Seal]

Irrigation Bill Discussed with Members of House Committee

A Washington dispatch of April 2d says:

At the request of the President, the members of the House Irrigation Committee had a conference with him this morning lasting more than two hours, with reference to certain features of the irrigation bill, which had been criticised by Charles H. Maxwell, Prof. Pinchot of the Forestry division of the Agricultural department, and others. There were present at the conference Mr. Tongue, chairman of the committee, Representatives Mondell, Sutherland, Newlands and Terrill, Mr. Metcalf of California, Senator Dietrich of Nebraska, Prof. Pinchot and Mr. Maxwell.

The President discussed the question with the utmost frankness and without any attempt to force his views upon the commitee. The different criticisms were discussed at length, in which all those present joined.

One suggestion had been made to the President that the bill should be so amended as to prevent any person from obtaining a water right unless he was an actual, bona fide and permanent resident upon the land sought to be irrigated. Mr. Sutherland called attention to the fact that in Utah the farmers had settled in towns and villages, having their farms outside, and that such an amendment would have the effect of denying them the benefits of this law.

The President stated he recognized the force of this suggestion and was willing that the benefits of the bill should be confined to owners and occupants of the land, without actual residence thereon.

Congressmen Sutherland and Mondell strenuously insisted upon the provision for local control remaining in the bill, calling attention to the fact that each of the arid States had passed laws which were the result of years of experience with reference to the appropriation and use and distribution of the water; that these laws were now recognized as controlling the waters, but if the matter were turned over to national control much confusion and friction would result; that it would be unwise to have a divided control, and that inasmuch as it was purely a local matter the people of the various States were in better position to control the subject than officials in Washington, two or three thousand miles away. It was urged that as soon as a water right was acquired it became private property and should be held and enjoyed under State laws, and it was suggested that there was much doubt as to the

constitutionality of a law which would permit the national government to control the requirements and use of private property.

The President substantially acquiesced in this view, but expressed the fear that if the provision that State laws should control the appropriation of water should remain in the bill, it might be construed as permitting individual States to deny the right of citizens of one State to take water from another, and it was finally agreed that the bill should be so amended as to preclude any construction which would permit any State to deny to the citizens of another State the right to take water from the former into the latter.

DEFENDANTS' EXHIBIT 17

Water-Supply and Irrigation Paper No. 93

Series { I. Irrigation, 16
J. Water Storage, 10

Department of the Interior
United States Geological Survey
Charles D. Walcott, Director

PROCEEDINGS
OF
FIRST CONFERENCE OF ENGINEERS OF THE RECLAMATION SERVICE
WITH ACCOMPANYING PAPERS

Compiled By

F. H. NEWELL
Chief Engineer

Washington
Government Printing Office
1904

NOTICE OF APPROPRIATION OF WATER

[103] Section 8 of the reclamation act provides that the Secretary of the Interior, in carrying out the provisions of the act, shall proceed in conformity with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation. Before the filing of the first notice of appropriation of water in any state the matter of the advisability of making such filing should be submitted to the chief engineer, because some of the State laws may be such that it is impossible to comply

with them in conducting operations under the reclamation act.

The following is a general form of notice of appropriation of water, submitted as a guide for engineers who file such notices. Authority to act in the name of the Secretary of the Interior can be obtained by applying to the chief engineer, who will obtain the same from the Director, the latter being empowered by the Secretary of the Interior to designate suitable persons to act in his behalf.

* * *

In many cases it will be necessary to vary this form of notice in order to meet the requirements of the local laws. When such a notice has been prepared it is advisable to submit a copy to the United States district attorney, calling his attention to the instructions of the Attorney-General, dated September 14, 1903, providing for giving advice to the engineers of the reclamation service concerning the preparation of such notices, and requesting any suggestions which he may have to offer in regard to the form submitted. The original notice with evidence that it has been recorded in the proper State or Territorial office, should be promptly forwarded to the chief engineer.

DEFENDANTS' EXHIBIT 18

Water-Supply and Irrigation Paper No. 146

Series { I. Irrigation, 19
J. Water Storage, 12

Department of the Interior
United States Geological Survey
Charles D. Walcott, Director

PROCEEDINGS

OF

SECOND CONFERENCE OF ENGINEERS OF THE RECLAMATION SERVICE

WITH ACCOMPANYING PAPERS

Compiled By

F. H. NEWELL
Chief Engineer

Washington
Government Printing Office
1905

APPROPRIATION OF WATER.

[222] On page 103 of Water-Supply and Irrigation Paper No. 93 directions are given for the proper filing of notices of appropriation of water. Engineers are therein advised—

> to submit a copy to the United States district attorney, calling his attention to the instructions of the Attorney-General, dated September 14, 1903, providing for giving advice to the engineers of the Reclamation Service concerning the preparation of such notices, and requesting any suggestion which he may have to offer in regard to the form submitted.

It has been found necessary to caution engineers to follow this advice.

In several of the reclamation States laws were enacted in 1905 granting special privileges to the United States when appropriating water for the purpose of carrying out the provisions of the reclamation act. These, together with the statutory law governing appropriations in the other reclamation States, are summarized below.

It is important to follow strictly the provisions of law and the local regulations in filing notices of appropriation.

In the States where special laws have been enacted to govern appropriations by the United States the specific language of the law should be utilized and followed in giving the required notices.

The work required under the various statutes after filing notices differs under the various laws, and it is essential that the requirements in each case shall be followed as closely as possible.

Nothing will be gained by filing these notices unless their form and the subsequent proceedings comply with the provisions of the law, and, accordingly, these matters must be so ordered as to conform to the law and the regulations in all particulars so far as it is possible under the operations of the reclamation act.

In Arizona a notice[a] of the proposed appropriation must be posted at the place of intended diversion. A copy of the notice must be [223] filed for record in the office of the recorder of the county or counties in which the diversion and other works are situated, and a copy of the notice must also be filed in the office of the secretary of the Territory. The works must be constructed within a reasonable time after posting and filing the notice.

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[a] Water-Sup. and Irr. Paper U. S. Geol. Survey No. 93, 1904, p. 103.

In California a notice[a] of the proposed appropriation must be posted at the point of intended diversion, and a copy must be recorded in the office of the recorder of the county in which it is posted within ten days. Work must be begun within sixty days and prosecuted diligently and uninterruptedly to completion.

In Colorado, within sixty days after commencing construction, statements and maps in duplicate must be filed with the State engineer for his approval. After approval by the State engineer the claimant must file duplicate map and statement thus approved in the office of the county clerk and recorder of the county in which the headgate of the canal or the reservoir is situated. Blank forms for this statement and directions for preparing maps can be obtained upon application to the State engineer. Engineers are requested to keep copies of such forms and directions on file in their office and to follow them carefully in making an appropriation of water.

In Idaho an application must be made to the State engineer for permission to make an appropriation. Engineers are requested to keep on file in their office copies of printed forms and directions furnished by the State engineer, and are cautioned to abide by all the rules and regulations of the State engineer's office in making an appropriation.

In Kansas a notice[a] of the proposed appropriation must be posted at the point of intended diversion, and within ten days thereafter a copy of the same must be posted in a conspicuous place in the office of the county clerk of the county in which the diversion is situated and be recorded by the county clerk. Work must commence within sixty days and be prosecuted diligently.

[a] Op. cit., p. 103.

In Montana a notice[a] of the proposed appropriation must be posted at the point of intended diversion, and a verified copy must be filed within twenty days with the county clerk of the county in which the diversion is made.

By an act of the Montana legislature approved February 27, 1905, all appropriations made in behalf of the United States by persons duly authorized by the Secretary of the Interior shall be held valid for the period of three years after the filing of the notice as above described, and no part of the waters designated in the notice shall be subject to other appropriation for three years unless a notice of abandonment of the irrigation project is filed under authority from [224] the Secretary of the Interior with the county clerk and recorder of the county in which the original notice was filed.

In Nevada the same procedure must be followed as in Idaho.

In New Mexico, by an act approved March 16, 1905, it is provided that whenever the proper officer of the United States shall notify the State engineer that the United States intends to utilize certain specified waters, such waters shall not be subject to further appropriations, except in so far as formally released in writing by a duly authorized officer of the United States.

In North Dakota, by an act approved March 1, 1905, it is provided that whenever the proper officer of the United States shall notify the State engineer that the United States intends to utilize certain specified waters, such waters shall not be subject to other appropriation for a period of three years from the date of said notice, except in so far as formally released in writing by the proper officer of the

[a] Op. cit., p. 103.

United States. Before the expiration of the three-year period plans of the proposed work must be filed in the office of the State engineer.

In Oklahoma the statutory provisions covering this subject are the same as those in North Dakota, stated above.

In Oregon, whenever the proper officer of the United States shall file in the office of the State engineer a written notice that the United States intends to utilize certain specified waters, such waters shall not be subject to further appropriation for a period of three years from the date of filing such notice, within which time final plans of the proposed works must be filed with the State engineer. Construction must be authorized by the United States within four years of the date of the original notice. No part of the waters so appropriated shall be subject to other appropriation within the period stated above, unless formally released in writing by a duly authorized officer of the United States, which release shall be filed in the office of the State engineer.

In South Dakota the statutory provisions covering this subject are the same as those in North Dakota, stated above.

In Utah the same procedure must be followed as in Idaho.

In Washington, by an act approved March 4, 1905, it is provided that whenever a duly authorized officer of the United States shall notify the commissioner of public lands that the United States intends to make examinations or surveys for the utilization of certain specified waters, the waters so described shall not be subject to other appropriation for a period of one year from the date of receipt of such notice by the commissioner of public lands, unless formally released in writing by a duly authorized officer of

the United States. If, before the expiration of the one-year period, a duly authorized officer of the United States shall certify in writing to the commis [225] sioner of public lands that the project contemplated in such notice appears to be feasible and that the investigation will be made in detail, the waters specified in such notice shall not be subject to other appropriation for the further period of three years following the date of receipt of such certificate, and such further time as the commissioner of public lands may grant upon application of a duly authorized officer of the United States and notice thereof first published once a week for four consecutive weeks in a newspaper published in each county in which the works are to be constructed.

In Wyoming the same procedure must be followed as in Idaho.

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DEFENDANTS' EXHIBIT 19

58TH CONGRESS, *2d Session.* } House of Representatives, { DOCUMENT No. 44.

Department of the Interior
United States Geological Survey
Charles D. Walcott, Director

SECOND ANNUAL REPORT OF THE RECLAMATION SERVICE

1902-3

F. H. NEWELL
Chief Engineer

Washington
Government Printing Office
1904

• • •

[33] STATE LAWS.

Section 8 bears upon the relation with State laws, prevents interference with vested rights acquired thereunder, and directs the Secretary of the Interior, in carrying out the provisions of the reclamation act, to proceed in conformity with such laws. It, however, makes a very important declaration that the right to the use of water acquired under the provisions of this act shall be appurtenant to the land irrigated, and beneficial use shall be the basis, the measure, and the limit of the right. As the laws of many of the States and Territories relating to water are in a more or less chaotic condition, the declaration as to appur-

tenance to the land irrigated, and beneficial use, helps to solve some of the problems which otherwise would be extremely serious.

In order to carry out the provisions of this section, careful study must be made of the effect of State laws upon each project under consideration in that particular State. It appears probable that in some of the States radical changes in the laws must be made before important projects can be undertaken. In one of the States—Nevada—the legislature has recognized the importance of action and has passed laws intended to supplement the reclamation law and to assist in carrying out its purpose.

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DEFENDANTS' EXHIBIT 20

58TH CONGRESS, *3d Session.* } House of Representatives, { DOCUMENT No. 28.

Department of the Interior
United States Geological Survey
Charles D. Walcott, Director

THIRD ANNUAL REPORT OF THE RECLAMATION SERVICE

1903-4

(Second Edition)

F. H. NEWELL
Chief Engineer

Washington
Government Printing Office
1905

* * *

[31] STATE LAWS.

Section 8 bears upon State laws and vested rights. It brings about the need of a more or less complete study of existing systems of water appropriation and necessitates taking up with State officials [32] and legislators many details of State laws or proposed amendments. It is very important to secure as nearly a uniform system of laws in the various States as may be consistent with the different physical conditions, and it is believed that as time goes on the State laws will be brought into greater harmony with one another and with the necessities of irrigation development.

* * *

DEFENDANTS' EXHIBIT 21

59TH CONGRESS, *1st Session.* } House of Representatives, { DOCUMENT No. 86.

Department of the Interior
United States Geological Survey
Charles D. Walcott, Director

FOURTH ANNUAL REPORT OF THE RECLAMATION SERVICE

1904-5

F. H. NEWELL
Chief Engineer

Washington
Government Printing Office
1906

* * *

[23] STATE LAWS.

Section 8 bears upon State laws and vested rights. It brings about the need of a more or less complete study of existing systems of water appropriation and necessitates taking up with State officials and legislators many details of State laws or proposed amendments. It is very important to secure as nearly a uniform system of laws in the various States as may be consistent with the different physical conditions, and it is believed that as time goes on the State laws will be brought into greater harmony with one another and with the necessities of irrigation development.

* * *

PLAINTIFFS' EXHIBIT 1

United States Department of the Interior
Office of the Secretary
Washington, D.C. 20240

Oct 4 1972

Honorable Kent Frizzell
Assistant Attorney General
Land and Natural Resources Division
Department of Justice
Washington, D. C. 20530

Dear Mr. Frizzell:

I am advised that the Honorable Charles B. Renfrew, Judge of the United States District Court, Northern District of California, has requested that he be furnished with a statement by the United States of its position in connection with the applicability to the United States of America of Decisions 1379 and 1400, rendered by the California State Water Resources Control Board.

The position of the United States regarding these Decisions by the State Water Resources Control Board has been the subject of exhaustive study and careful consideration by this Department. We have concluded that the United States of America cannot be made subject to any terms or conditions imposed by a state agency which would in any way interfere with or affect the operation of Federal Projects for the purposes for which such Projects were authorized by Congress.

Both Decisions 1379 and 1400 purport to require the release of Federal water stored behind Federally constructed dams for purposes other than those contained in the authorizing

legislation. The Central Valley Project as a federal project cannot without the consent and approval of Congress be required to provide water for nonproject purposes to the impediment of its Congressionally authorized project purposes. The attempt by the State Water Resources Control Board to impose upon the United States terms and conditions requiring the release of stored water from Federal Reservoirs would, in my opinion, interfere with the operation of the Project by the United States and would be violative of the Congressional enactments authorizing the Project. The terms and conditions which the Board has attempted to impose upon the United States could result in interference with such authorized purposes as power production, recreation, navigation, and water deliveries pursuant to contracts entered into and authorized in accordance with Federal statutes.

We would point out, however, that operation of the Central Valley Project to meet authorized purposes has provided significant water quality benefits in the Central Valley and the Sacramento-San Joaquin Delta. Project releases into the Sacramento and American Rivers maintain flows which provide substantial dilution of low quality inflows. Project operations have restricted salinity intrusion into the delta to a level far below that which would occur under natural conditions. The Department will continue to voluntarily assist in improving water quality in the Central Valley of California to the extent it can be done consistent with the objectives and requirements of the Project as authorized by Congress.

Sincerely yours,

(sgd) JAMES R. SMITH
James R. Smith
Assistant Secretary
of the Interior [2]

PLAINTIFFS' EXHIBIT 2

County of Sacramento
State of California—ss.

AFFIDAVIT OF RICHARD J. DAUBER

Richard J. Dauber, being first duly sworn, deposes and says:

That I am Assistant Regional Solicitor, Sacramento Region, Office of the Solicitor, Department of the Interior;

That I have reviewed the files and records in the office of the Regional Solicitor relating to the hearings before the State Water Resources Control Board on Applications 14858, 14859, 19303, and 19304 which culminated in Decision 1422 by said Board;

That I personally took part in the hearings before said Board which culminated in Decisions 1379 and 1400;

That it has been the standard practice and procedure of the Bureau of Reclamation and its attorneys at such water rights hearings to advise the said Board that it has no jurisdiction or power to condition water right permits issued to the said Bureau;

That this position was clearly set forth in the Opening Brief of the United States dated January 31, 1973, and filed with the said Board in the Applications 14858, 14859, 19303, and 19304 which culminated in Decision 1422;

That the Board has also been advised in the course of other hearings on water right applications by the Bureau of Reclamation that the said Bureau was appearing in the interest of comity and that the Bureau does not recognize the jurisdiction of the Board over the Bureau;

That other instances in addition to the one above cited where the Board has been advised of the Bureau's position

on the jurisdiction of the Board are found in the official transcript of the proceedings In the Matter of Applications 5625, 5626, 9363-9368, and 10588 leading to Decision 990 at pages 1716, 3317, 6587, and numerous other pages; in the official transcript of the proceedings In the Matter of Applications 5625 and 38 other Applications leading to Decision 1379 at page 1689; in the official transcript of the proceedings In the Matter of Application 18721 leading to Decision 1400 at page 122.

That there are also briefs and letters sent to the Board which enunciate the Bureau's position of the lack of jurisdiction of the Board over the United States Bureau of Reclamation.

RICHARD J. DAUBER

Richard J. Dauber

Official Seal
NATALIE J. VINSON
Notary Public California
County of Sacramento
My Commission Expires March 2, 1975

Subscribed and sworn to before me this 10th day of October, 1974.

NATALIE J. VINSON [2]

PLAINTIFFS' EXHIBIT 3

United States Department of the Interior
Bureau of Reclamation
Washington, D.C. 20240

Aug 29 1974

In Reply Refer to: 736 510.

Honorable Ronald Reagan
Governor of California
Sacramento, California 95814

Dear Governor Reagan:

Thank you for your letter of June 28 expressing your concern about the criticism of the terms of water rights decision D-1422 issued by the California Water Resources Control Board.

As you point out, the decision does not detract from the flood control benefits of the New Melones project. It also finds that the water quality and fish and wildlife benefits of the project have been demonstrated.

Unfortunately, the decision does place restrictions upon the operation of New Melones Dam, Reservoir, and Powerplant that seriously impair the authorized project purposes. Some of the purposes; for example, irrigation, municipal and industrial water, and recreation, would be severely restricted or even eliminated in favor of maintaining a "white water" area. Interestingly, the "white water" area was made possible largely from upstream reservoir releases for power development and downstream irrigation rather than due to natural conditions.

If the New Melones Reservoir were to be operated in accordance with the terms of the decision, no firm power yield would be possible. The estimated electrical output of 430 million kilowatthours annually would serve the needs of a city of approximately 200,000 people. In order to generate that amount of power in an oil-fired thermal plant would require over 600,000 barrels of oil annually. Certainly the existing energy shortage should make the provision of that quantity of energy from pollution-free sources a highly desirable function to be served by New Melones.

The water supply which would be conserved by the New Melones Reservoir would meet the needs of both agricultural and municipal and industrial uses within the Stanislaus River Basin, as provided in the authorization, and in other service areas of the Central Valley Project to the extent of the remaining available water. We already have received requests for water from local counties and other water users which exceed the reservoir yield several times. The increasing need for agricultural production in California reinforces the previously determined need for an increased water supply.

We understand that, initially, the New Melones Reservoir, if operated as authorized by the Congress, would provide an estimated 850,000 recreation days of use annually. Ultimately, the annual use would increase to 3 million recreation days. The restrictive operations imposed by D-1422 would substantially impair such recreational use due to the relatively small amount of water which would be in the reservoir during the summer recreational months.

We are please that you continue to support the New Melones project. However, we hope you will reconsider the

desirability of implementing D-1422 in view of the greatly increased benefits which would be provided within California and the increase in people to be served by the project as authorized by Congress.

Sincerely yours,

G. G. STAMM
Commissioner

bcc:
Regional Director, Sacramento, California
Chief, Division of Planning Coordination, E&R Center
(w/c of incoming to each)

PLAINTIFFS' EXHIBIT 4

County of Sacramento
State of California—ss.

AFFIDAVIT OF JOHN R. MORGAN

John R. Morgan, being first duly sworn, deposes and says:

That I am Chief, San Joaquin Branch, Planning Division, Mid-Pacific Region, Bureau of Reclamation, Department of the Interior;

That as Chief, San Joaquin Branch, I have supervision over planning activities of Bureau of Reclamation projects in the San Joaquin Valley, California, including New Melones Dam and Reservoir which by P. L. 87-874 is to be integrated into the Federal Central Valley Project;

That I have reviewed the Decision 1422 rendered by the State Water Resources Control Board on Applications 14858, 14859, 19303, and 19304;

That the Decision places severe restrictions on the operation of New Melones Dam, Reservoir and Powerplant that would seriously impair the authorized purposes of the project which include full integration with the Central Valley Project. These purposes which would be impaired include: irrigation, municipal and industrial water, power, reservoir recreation, and fish and wildlife enhancement. These would either be severely restricted or eliminated under terms in the Decision. There are other requirements, which if complied with, would have the effect of placing the final supervision of the operation of the New Melones Project under the jurisdiction of the State Water Resources Control Board without any stated operations criteria.

That several requirements contrary to the authorization are imposed by the Order. These are referred to by the numbered conditions and limitations in the Order;

Conditions 1-a and 1-d. These portions of the Order provide that until further order of the Board, the water appropriated shall be used only for preservation and enhancement of fish and wildlife, recreation, and water quality control purposes. Under Condition No. 2 provision is made for these same purposes and for meeting prior rights. The Board refused, therefore, to allow any direct use or storage of water for consumptive uses (irrigation and municipal and industrial purposes) above that required to meet prior rights. These Conditions also do not provide for any storage of water in New Melones Reservoir specifically for recreation and power purposes.

As provided in the authorization of the project, New Melones Reservoir would be fully integrated with Central Valley Project with the water supply conserved by the New Melones Reservoir used to meet the needs of both agricultural and municipal and industrial uses within the Stanislaus River Basin, and in other service areas of the Central Valley Project to the extent of the remaining available water. The project authorization includes provisions for recreation enhancement and power production at New Melones Dam and Reservoir.

Condition 2. This condition again is similar to 1-a and 1-d in that storage is limited until further order of the Board for the purposes specified (downstream fishery enhancement, water quality, prior rights, and flood control).

The condition, however, also specifically provides that no storage shall be allowed for power and recreational purposes. The Decision further provides that before any further order of the Board in regard to additional impoundment is considered it "shall be preceded by a showing that the benefits that will accrue from a specific proposed use will outweigh any damage that would result to fish, wildlife and recreation in the watershed above New Melones Dam and that the permittee has firm commitments to deliver water for such other purposes. The Board reserves jurisdiction for the purpose of establishing dry year criteria at the time such impoundment is approved." This creates a dilemma since the United States must have an assured water supply before entering into water service contracts. Further, if such power were to rest with the Board, it would effectively place every acre-foot of water stored for conservation use—including power—under complete control of the State Board, which would be directly contrary to the authorization.[2]

New Melones Reservoir if operated as authorized by the Congress would provide initially an estimated annual use of 850,000 recreation days with an estimated full development use of three million recreation days. The restrictive operations imposed by Decision 1422, without subsequent

action by the State Water Resources Control Board, would substantially impair such recreational use as a result of the restrictions in the amount of water which could be stored in the reservoir during the summer recreational season. Furthermore, with reduced storage and no minimum pool permitted, the lake fishery would be severely restricted.

Condition 3. This Condition requires that a reservoir operation study be submitted to the Board before any water is impounded in the reservoir. The study is required to be updated every five years. The details of the proposed reservoir clearing plan also are required to be included as part of this study to show how clearing will progress as additional storage is "authorized." Under this condition the Board again assumes functions already granted by Congress in the authorization to the Secretary of the Interior and the Secretary of the Army. The Board would obtain on its own initiative, operating control, not only of how much and when water was permitted to be stored, but also of what reservoir clearing was done. Staged reservoir clearing apparently contemplated by the Board would be more costly and perhaps more disruptive to the environment that the overall clearing which would be done by the Corps of Engineers during project construction. This Condition is contrary to the authorization.

Condition 4. The Board under this Condition would "authorize" use of water for consumptive purposes only in San Joaquin, Stanislaus, Calaveras, and Tuolumne Counties. Further, it states that a petition to amend the permits is required to include other specific areas which will be considered upon a showing that water from other CVP sources is not available to serve such areas. This countermands the authorized integration of New Melones Unit into the Central Valley Project.

As provided in the authorization of the project, the water supply conserved by the New Melones Reservoir would be used to meet the needs of [3] both agricultural and municipal and industrial uses within the Stanislaus River Basin, and in other service areas of the Central Valley Project to the extent of the remaining available water as determined by the Secretary of the Interior. The Decision would obviate this determination by limiting service to these four counties and by only providing for possible further use of water outside of these counties after the Board's favorable consideration of a petition to be filed with the Board by the Bureau. The Board, under this Condition, assumes operating control which is placed by the authorization in the Secretary of the Interior.

Condition 5. This Condition states criteria to be used for water quality control purposes. The total dissolved solids concentration at Vernalis is stated to be 500 parts per million or less. The dissolved oxygen concentration in the Stanislaus River is stated to be "as specified in the Water Quality Control Plan (Interim), San Joaquin River Basin 5C, State Water Resources Control Board, June 1971."

The Condition further states, "In the event that the Water Quality Control Plan (Interim) is amended or superseded, the foregoing water quality objectives shall be modified to conform to the then current criteria.

The two criteria stated are not those reported to Congress in conformity with the authorization.

The provision included by the Board for modifying the water quality objectives would be contrary to the criteria presented to Congress in conformity with the authorization and would permit taking up to the full yield of New Melones for this purpose if the revised criteria so required.

Condition 6. The State Water Resources Control Board reserves jurisdiction over the permits for the purpose of revising water release requirements for water quality and fish releases pursuant to additional studies.

Under such jurisdiction there is no assurance that the water service functions authorized by the Congress could be realized. Since most of these functions are sources of revenue, project financial integrity would be threatened. As stated in previous response to Condition 5, the water [4] quality releases were reported to Congress in conformity with the authorization and further agreed upon in the memorandum of agreement between the Central Valley Regional Water Quality Control Board and the Bureau of Reclamation. The project fish releases were previously studied and agreed upon by the State Department of Fish and Game, the U. S. Bureau of Sport Fisheries and Wildlife, and the Bureau of Reclamation.

Condition 7. This Condition would place additional requirements on the Bureau to monitor and report on downstream diversions. The Bureau of Reclamation is not authorized to police diversions under water rights held by others.

Condition 8. This Condition also would place additional requirements on the Bureau to obtain and keep additional records which would necessitate additional expense not authorized. Funds for additional work would have to be contingent upon appropriations by Congress and would need to be within the scope of the project authorization.

Condition 9. Under this Condition the maximum quantities of water stated in the Decision for appropriation at New Melones could be reduced if investigation warrants. This would again leave determination of how much water could be used and stored at the Board's discretion which

is contrary to the authorization and could threaten the financial integrity of the project.

Condition 13. This Condition provides that: "All rights and privileges under this permit including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water." In addition, it states that: "Permittee may be required to implement such programs as (1) reusing or reclaiming the water allocated; (2) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (3) suppressing evaporation losses from water surfaces; (4) controlling phreatophytic growth; and (5) installing, [5] maintaining and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project."

All of these indicated measures and general areas of control to be exercised by the Board as included in these Conditions would place the operation and maintenance of the New Melones Project under the control of the Board. This is contrary to the authorization which expressly states that the operation and maintenance of New Melones shall be by the Secretary of the Interior, pursuant to Federal Reclamation Laws, except for the flood control aspects which would be in accordance with rules and regulations prescribed by the Secretary of the Army.

This Condition would obligate the Bureau to make expenditures at the discretion of the Board with no provision for reimbursement.

Condition 15. This Condition would allow the Board to exercise or delegate to others access to the Project to determine compliance with the specified terms. This has the effect of again placing the project operation under the Board's control rather than under the Secretary of the Interior in accordance with the authorization. It would compromise the Secretary's responsibility for the security of Federal works.

Condition 17. This Condition would require the installation and maintenance of an outlet pipe of adequate capacity near the bottom of the natural stream channel "or provide other means satisfactory to the State Water Resources Control Board" for release of water not authorized for appropriation. The additional outlet pipe, if required by the Board, is not included in the designs and would involve considerable additional costs to install and operate. The most significant language in this Condition is "or provide other means satisfactory to the State Water Resources Control Board" which gives the Board final rights to approve designs by which inflow can be released. The Board may have the right to be assured the designs will do this but not the right to select the means. The completed outlet facilities are designed to operate (except for emergency reservoir [6] evacuation) down to a minimum reservoir pool which is not allowed by the Board's order.

Condition 20. This provision would make it possible for the Board at any time to decide that some portion or all of the yield of New Melones Reservoir would be used for water quality purposes regardless of commitments to meet other needs and uses. It again would give complete control to the Board directly contrary to the authorization and threatens the financial integrity of the project.

Condition 22. This provision again places complete control of the construction and operation of the project with the Board. This is contrary to the authorization which vests that authority with the Secretary of the Army and the Secretary of the Interior.

Condition 25. This provision places the Board's interpretation on the primary place of use of water as being wherever needed within the four counties of origin. This is contrary to the authorization which requires the Secretary of the Interior to determine the quantity of water required to satisfy all existing and anticipated future needs within "the Stanislaus River Basin" which may or may not coincide with the counties of origin.

That the Decision also contains conditions contrary to the method of operation proposed by the Bureau of Reclamation and the Corps of Engineers as follows:

Condition 3. This Condition requires that a reservoir operation schedule be filed which would show the "manner in which clearing will progress as additional storage is authorized." This Condition would prohibit the full operation of New Melones Unit as planned and its integration with the Central Valley Project. The staged clearing of the reservoir which the Order contemplates also would be contrary to the effective construction plan developed by the Corps of Engineers.

Condition 6. This Condition would prevent the Bureau from having any assurance that the project could be operated as planned since the Board under the jurisdiction retained could change the basic operational criteria. [7]

Condition 9. Under this Condition the Board could reduce the quantities of water for direct use and storage at New Melones. Such provision for future change would impair the planned integrated operation of New Melones

Unit with Central Valley Project and could severely affect the accomplishments and revenues obtained.

Condition 17. The proposed method of operation of New Melones Reservoir for releasing water storage would include provisions to deliver water from an intake structure located at about elevation 750 feet, which is 58 feet below the 310,000 acre-feet minimum pool elevation of 808 feet. Provision of this minimum pool, although not specifically included in the authorizing act itself, was provided for in the project authorization by inclusion in the supporting document (H.D. 453). This type of operation does not contemplate nor require installation and operation of the outlet facilities indicated in Decision 1422 which states that "permittee shall install and maintain an outlet pipe of adequate capacity in his dam as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Resources Control Board, in order that water entering the reservoir which is not authorized for appropriation under this permit may be released." The completed outlet facilities (which were essentially completed at the time D-1422 was issued) were not designed to permit release of water at streambed elevation except for emergency evacuation of the reservoir. The specific requirement for low level outlet facilities in the Decision would place considerable additional costs and operational constraints on the project which are not planned or deemed necessary in the designs and operation of the project as authorized. The minimum pool operation proposed by the Bureau would permit release of any water which was required for downstream use.

Condition 20. Under this Condition the Board could determine that a substantial increase in water releases should be made to meet future water quality objectives.

With such potential for a required operational change, the Bureau could not effectively plan nor control the [8] operation of the project. The entire yield of the reservoir might be required by the Board. The accomplishments and financial integrity could be impaired by future determination by the Board.

Condition 22. This Condition requires that any change in the project which the Board determines to be substantial shall be approved by the Board. Congress requires that any substantial change in the authorized project receive its approval. The Board's condition establishes a hiatus.

/s/ JOHN R. MORGAN
John R. Morgan

Official Seal
NATALIE J. VINSON
Notary Public, California
County of Sacramento
My Commission Expires
March 2, 1975

Subscribed and sworn to before me
this 11th day of October, 1974.
/s/ NATALIE J. VINSON [9]

PLAINTIFFS' EXHIBIT 5

County of Sacramento
State of California } ss.

AFFIDAVIT OF J. ROBERT HAMMOND

J. Robert Hammond, being first duly sworn, deposes and says:

That I am Assistant Regional Director, Mid-Pacific Region, Bureau of Reclamation, Department of the Interior;

That as Assistant Regional Director I have general supervision over all operational activities of the Mid-Pacific Region;

That I graduated from Purdue University in 1936 with a B.S. degree in electrical engineering;

That I am a member of the Western Systems Coordinating Council which Council consists of representatives of the major power producers in western United States and Western Canada;

That I personally supervised power operations of the Central Valley Project for four years as Chief of Operations;

That I have read and am familiar with Decision 1422 issued by the State Water Resources Control Board on Applications 14858, 14859, 19303, and 19304;

That the operation of New Melones Reservoir in accordance with conditions and limitations set forth in D-1422 would (1) reduce the average annual energy generation from 430 million kilowatt-hours to 192 million kilowatt-hours, and (2) reduce the firm capacity from 255 megawatts (at 10% plant factor) to zero;

That the average energy generation would be reduced because (1) the average head on the powerplant would be reduced from 506 feet to about 325 feet, and (2) the average annual flow through the powerplant would be reduced by 310,000 acre-feet. The reduced flow through the powerplant reflects the releases that would be made each year below elevation 808 feet—the minimum elevation at which the authorized powerplant can be operated;

That the firm capacity would be reduced to zero because the firm capacity of a powerplant must be available each and every month of the year. Operating under D-1422, the reservoir would be drawn down to zero power head. Under that condition the powerplant could not generate;

That the power benefits associated with the 192 million kilowatt-hours are about $1,930,000 annually. This amount of power benefits would not be sufficient to justify the powerplant investment as presently authorized;

That the existing Pacific Gas and Electric Company's Melones Powerplant, which generates an average of 117 million kilowatt-hours annually, will be inundated by New Melones Reservoir. Operating in accordance with D-1422 will not change this situation. Thus, this power would no longer be available.

/s/ J. ROBERT HAMMOND
J. Robert Hammond

Official Seal
NATALIE J. VINSON
Notary Public · California
County of Sacramento
My Commission Expires March 2, 1975

Subscribed and sworn to before me
his 11th day of October, 1974

/s/ NATALIE J. VINSON [2]

PLAINTIFFS' EXHIBIT 6

United States
Department of the Interior
Bureau of Reclamation
New Melones Unit
Central Valley Project, California

Memorandum of Agreement for the Protection and Enhancement of the Water Quality of the Stanislaus and San Joaquin Rivers as Affected by the New Melones Project Under Water Right Application 19304 of the United States of America and by Municipal and Industrial Wastes

WHEREAS, the United States intends to construct a dam and reservoir in and across the Stanislaus River at a point upstream from Oakdale, Stanislaus County, California, and will utilize said dam and reservoir and their related works for the diversion and storage of water of the Stanislaus River primarily for flood control, domestic, irrigation, recreation, municipal and industrial, fish culture, and water quality control purposes and for the generation of hydroelectric energy; said dam to be known as New Melones Dam and the Reservoir created thereby to be known as New Melones Reservoir; and

WHEREAS, the United States has filed an application and is seeking to obtain a permit and license to appropriate and apply to beneficial use waters of the Stanislaus River and its tributaries in connection with the operation of the New Melones Dam and Reservoir, such application being designated in the files of the California State Water Resources Control Board as number 19304; and

WHEREAS, the Central Valley Regional Water Quality Control Board with respect to its Region has the duty to

obtain coordinated action in water quality control and in the abatement, prevention and control of water pollution and nuisance; and

WHEREAS, the beneficial uses of the Stanislaus and San Joaquin Rivers are dependent upon water quality conditions, and the parties recognize that water quality conditions may be protected and enhanced by facilities constructed and operated under a permit and license issued on Application 19304; and

WHEREAS, authority to investigate the need for water quality control is contained in the Federal Water Pollution Control Act amendments of 1961 (Public Law 87-88, approved July 20, 1961) which provides in part

> ". . . in the survey or planning of any reservoir of the Corps of Engineers, Bureau of Reclamation, or other Federal Agency, consideration shall be given to inclusion of storage for regulation of streamflow for the purpose of water quality control . . ."

and, in addition, the 1962 Flood Control Act authorizing the New Melones Project (Public Law 87-874) provides

> ". . . that the Secretary of the Army give consideration during the preconstruction planning for the New Melones Project to the advisability of including storage for the regulation of streamflow for the purpose of downstream water quality control . . .;"

and

WHEREAS, cooperative studies by the Public Health Service, Bureau of Reclamation, and Corps of Engineers of water quality requirements in Stanislaus River and lower San Joaquin River for irrigation, fish, and other purposes were made demonstrating the feasibility of adding water quality control as a function of the New Melones Project; and

WHEREAS, the construction of the New Melones Dam by the United States and operation, as provided in this agreement, will assist in providing protection and enhancement of the quality of the waters of the Stanislaus and San Joaquin Rivers and it is mutually beneficial and desirable that the parties formalize their understanding by this memorandum of operating agreement:

NOW, THEREFORE, the United States acting by and through the Bureau of Reclamation, hereinafter called the Bureau, its successors and assigns, and the State of California, acting by and through its Central Valley Regional Water Quality Control Board, hereinafter called the Regional Board, its successors and assigns, and in consideration of the premises contained agree as follows:

1. The Bureau shall, in addition to fishery requirements, release from New Melones Dam, for water quality control purposes in the downstream reaches of the Stanislaus River and in the San Joaquin River below the [2] confluence of the two rivers, flows necessary to maintain the objectives listed below, but not in excess of 70,000 acre-feet in any one year. Releases of water for quality control purposes shall be scheduled to maintain the oxygen level at or above 5 milligrams per liter (mg/l) in the Stanislaus River and the level of total dissolved solids not to exceed a mean monthly concentration of 500 mg/l in the San Joaquin River immediately below the mouth of the Stanislaus River. PROVIDED: that if hydrologic or other conditions prevent maintenance of a 500 mg/l TDS level on a mean monthly basis during the entire year in the San Joaquin River immediately below the mouth of the Stanislaus River, operational releases of the water quality reservation will be restricted to the irrigation season in accordance with irrigationists' needs.

2. The Bureau shall make all reasonable efforts to perfect and protect water rights necessary for the water quality reservation and for water quality operational purposes.

3. The Regional Board shall make all reasonable efforts to support the Bureau to obtain and protect water rights for the water quality reservation of this project and to protect the water released for water quality control purposes.

4. Should the Bureau assign, convey or otherwise dispose of any interest in this project or rights pursuant to Application 19304, such disposition shall expressly be made subject to the provisions of this agreement.

5. The Bureau and the Regional Board hereby agree that the provisions of this agreement should be included by way of reference or otherwise in any permit or license by the State Water Resources Control Board of California pursuant to Water Right Application 19304. [3]

Dated: This 2d day of July, 1969.

UNITED STATES BUREAU OF RECLAMATION

By R. J. REDFORD JR.
Regional Director Region 2

CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD

By JOHN VAN ASSEN
Chairman, Central Valley Regional Board